

California Nurses Association/National Nurses United
Comments For Pre- Emergency Regulation Stakeholder Process to repeal and amend CCR 22 §72329.1

Amendments mandated under SB 97 (H&S 1276.65) 2017

~~Strike through for deletions in existing regulation.~~

Bold and underlined for additions to existing regulation.

§ 72329.1. Nursing Service - Staff.

(a) Nursing service personnel shall be employed and on duty in at least the number and with the qualifications determined by the Department to provide the necessary nursing services for patients admitted for care. The staffing requirements required by this section are minimum standards only. Skilled nursing facilities shall employ and schedule additional staff as needed to ensure quality resident care based on the needs of individual residents and to ensure compliance with all relevant state and federal staffing requirements. The Department may require a facility to provide additional staff as set forth in Section 72501(g).¹

(b) Facilities licensed for 59 or fewer beds shall have at least one registered nurse or a licensed vocational nurse, awake and on duty, in the facility at all times, day and night.

(c) Facilities licensed for 60 to 99 beds shall have at least one registered nurse or licensed vocational nurse, awake and on duty, in the facility at all times, day and night, in addition to the director of nursing services. The director of nursing services shall not have charge nurse responsibilities.

(d) Facilities licensed for 100 or more beds shall have at least one registered nurse, awake and on duty, in the facility at all times, day and night, in addition to the director of nursing services. The director of nursing services shall not have charge nurse responsibilities.

(e) Nursing stations shall be staffed with nursing personnel when patients are housed in the nursing unit.

(f) Each facility shall employ sufficient nursing staff to provide a minimum of ~~3-2~~ **3.5** nursing hours per patient day.

(1) Facilities which provide care for mentally disordered patients and in which psychiatric technicians provide patient care shall meet the following standards:

¹ 22 CCR §72501 (g) The Department may require the licensee to provide additional professional, administrative or supportive personnel whenever the Department determines through a written evaluation that additional personnel is needed to provide for the health and safety of patients.

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(A) If patients are not certified for special treatment programs, facilities shall employ sufficient staff to provide a minimum of 2.4 hours per patient day for certified nurse assistants and an overall 3.2 3.5 nursing hours per patient day .

(B) For patients certified for special treatment programs, facilities shall employ sufficient staff to provide a minimum of 2.3 nursing hours per patient day for each patient² certified to the special treatment program, exclusive of additional staff required to meet the staffing standards of the special treatment program.

(g) Only direct caregivers as defined in Section 72038³ shall be included in the staff-to-patient ratios. The ratios shall be based on the anticipated individual patient needs for the activities of each shift and shall be distributed throughout the day to achieve a minimum of 2.4 hours per patient day for certified nurse assistants and an overall 3.2 3.5 nursing hours per patient day.⁴

(1) Skilled nursing facilities shall employ and schedule additional staff to ensure patients receive nursing care based on their needs.

(2) The calculation of the staff-to-patient ratio shall be based on the daily census of patients in the skilled nursing facility and not the total number of beds. Bed holds shall not be included in the calculations of the staff-to-patient ratio. If the census changes during a 24 hour period, the calculation shall be based upon the highest number of patients in the facility during the period.

(3) Unless granted a waiver pursuant to subsection (j), facilities shall use the following ratios:

(A) On the day shift, the ratio shall be at least one direct caregiver ~~CNA~~ for every 5 patients or fraction thereof;

(B) On the evening shift, the ratio shall be at least one direct caregiver ~~CNA~~ for every 8 patients or fraction thereof; and,

(C) On the night shift, the ratio shall be at least one direct caregiver for every 13 patients or fraction thereof.

(D) There shall be one licensed nurse for every 8 or fewer patients, based on the facility census for the 24 hour period. These are ~~not~~ in addition to the requirements in subparagraphs (A) through (C) above, and may be assigned to shifts as required by the facility, subject to other statutory and regulatory

² Unchanged in SB 97. This standard assures minimum nursing care hours per patient day for each patient of 2.3 hours in addition to overall average staffing level of 3.2 hours per patient day calculated without regard to the doubling of nursing hours as described in H&S Code Section 1276.9.

³ "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 Section 1337 of the Health and Safety Code, while performing nursing services as described in sections 72309, 72311 and 72315. A person serving as the director of nursing services in a facility with 60 or more licensed beds cannot be a direct caregiver.

⁴ Changes in SB 97 H&S Code Section 1276.65 (c)(1)(B)

requirements. **The overall licensed nursing staffing shall provide for at least 1.1 licensed nursing hours per patient day.**⁵

(4) "Day shift" refers to the 8-hour period during which a facility's patients require the greatest amount of care. "Evening shift" refers to the 8-hour period when the facility's patients require more than minimal care. "Night shift" refers to the 8-hour period during which a facility's patients require the least amount of care. A facility that uses other than 8-hour shifts for its direct caregivers shall seek a waiver under subsection (j) to continue that practice.

(5) A "shift" is defined as the working period of one direct caregiver, or the full time equivalent of one direct caregiver, who performs eight hours of nursing services, as defined in section 72038. Other than time spent on normal rest periods required by section 11020 of Title 8 of the California Code of Regulations, or in the in-service training at the facility required by section 71847, time not spent providing nursing services, such as that spent at meal periods, may not be included in calculating a shift. A facility that uses fractions of a shift to meet the ratios must ensure that the posting required by subsection (i) contains this information in a form that will enable all interested persons to verify that the required staffing is provided and the ratios are met.

(6) A citation for a class "AA", class "A" or class "B" violation may be issued for a violation of this section that meets the requirements specified in Section 1424⁶ of the Health and Safety Code.⁷

(h) The facility shall retain the staff assignment record that it employs to comply with subsection (i) for each shift, the licensing and/or certification status of the staff, and the patient census for each shift. Records documenting staffing, including staff assignment records and payroll records, shall be retained for a minimum of three years. Unless the request is made by Department staff who are present at the facility, in which case it must be provided immediately, documentation of staffing shall be provided to the Department within ten days of the Department's request for the documentation. If the facility is unable to provide the documentation requested by the Department, it shall cease admitting new patients until it demonstrates to the Department that it has the staff necessary to provide the care needed by the patients by submitting the requested documentation. The facility shall also comply with the provisions of Section 1429.1⁸ of the Health and Safety Code.

⁵ This requirement is a calculation of 3.5 (NCHPPD) – 2.4 CNA NCHPPD = 1.1 Licensed NCHPPD

⁶ This section of the H&S Code is still in effect and applicable to Long Term Facilities licensed as Skilled Nursing Facilities.

⁷ "**The department shall set a timeline for phase-in of penalties pursuant to this section through all-facility letters or other similar instructions.**" This is a new amendment in SB 97 that clearly indicates the continuing authority of CDPH to enforce violation of the standards in the same manner as previously authorized under Ch. 684 Stats of 2001 (AB 1075) that added H&S Code 1276.65.

⁸ H&S Code Section 1429.1. "If a long-term health care facility licensed as a skilled nursing facility or an intermediate care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1418, has one or more of the following remedies actually imposed for violation of state or federal requirements, the facility shall provide written notification of the action to each resident, the resident's responsible party and legal representative, and all applicants for admission to the facility..."

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(i) The facility shall post the patient census and staffing information daily. The posting shall include the actual number of licensed and certified nursing staff directly responsible for the care of patients for that particular day on each shift. The facility may use the form it currently uses to comply with the requirements of section 483.30 of title 42 of the Code of Federal Regulations, but, in addition to the information the federal regulation requires it to contain, it shall also designate the patient assignment by specifying each room and each bed to which each certified nurse assistant is assigned during his or her shift, and shall additionally specify the assignment of each licensed nurse and any other direct caregiver not assigned to a specific room or beds. This posting shall be publicly displayed in a clearly visible place.

(j) The facility may request a waiver for the staff-to-patient ratio in accordance with Section 1276.65 of the Health and Safety Code as long as the facility continues to meet the ~~3-2~~ 3.5 nursing hours per patient day requirement.⁹

(1) The facility shall submit a written request for a waiver with substantiating information to the Department. The facility shall request the waiver by using the program flexibility procedures specified in Section 72213, and the Department shall process the request as required by Section 1276 of the Health and Safety Code.

(2) The facility shall notify the Department if there has been a change in the substantiating information. A request for a waiver with substantiating information included shall be updated and resubmitted annually.

(k) Staffing for a distinct part intermediate care unit in a skilled nursing facility:¹⁰

(1) Units of less than 50 intermediate care beds shall not be required to provide licensed personnel in addition to those provided in the skilled nursing facility unless the Department determines through a written evaluation that additional licensed personnel are necessary to protect the health and safety of patients.

(2) Units of 50 or more intermediate care beds shall provide a registered nurse or licensed vocational nurse employed 8 hours on the day shift, 7 days per week in the unit.

(3) For purposes of this section intermediate care beds that are licensed as such by the Department shall not be included for establishing licensed nurse staffing as required in subsection (f)(1) if the unit is used exclusively for intermediate care patients.

(l) Initial implementation of this section shall be contingent on an appropriation in the annual Budget Act or another statute, in accordance with Health and Safety Code Section 1276.65(i).

⁹ SB 97 provides for the adoption of a facility waiver process of the direct care service hour requirements based on a shortage of available and appropriate health care professionals.

¹⁰ SB 97 did not exclude staffing of a distinct part intermediate care unit **within in a skilled nursing facility**. CNA supports the CDPH in it use of its authority to include staffing for a distinct part intermediate care unit within a SNF