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



ARNOLD SCHWARZENEGGER
Governor

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AFL 10-33

TO: Skilled Nursing Facilities

SUBJECT: Guidelines for 3.2 Nursing Hours per Patient Day (NHPPD) Staffing Audits Pursuant to the Authority Provided in Welfare and Institutions Code (W&I) Section 14126.022

In accordance with Health and Safety Code (HSC) Section 1276.5 and Welfare and Institutions Code (W&I) Section 14126.022, this notice is to provide guidelines for facility requirements during state audits for compliance with the 3.2 nursing hour per patient day (NHPPD) staffing requirements. These guidelines will be in addition to any other statutes and regulations applicable to a Skilled Nursing Facility (SNF).

I. OVERVIEW

For the past five years, the California Department of Public Health (CDPH) has conducted audits of random samples of open, active, freestanding skilled nursing facilities (SNFs) for compliance with the 3.2 NHPPD staffing requirement. Beginning February 1, 2011, CDPH will conduct unannounced on-site staffing audits of all SNFs in California. These audits will be conducted as part of standard licensing surveys or as stand-alone audits. Depending upon the facility size, the type of documentation reviewed, and the payroll and personnel records available, the audit may last from one to five days. All SNFs licensed pursuant to HSC 1250 (c) will be audited, including state facilities and continued care retirement communities. Per HSC Section 1276.9, Special Treatment Programs will not be audited.

The minimum 3.2 NHPPD does not assure that any given patient receives 3.2 hours of nursing care; it is the total number of nursing hours performed by direct caregivers per patient day divided by the patient census.

W&I Section 14126.022 requires the Department to assess a SNF an administrative penalty if the Department determines that the SNF fails to meet the NHPPD requirements pursuant to HSC Section 1276.5 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 an administrative penalty is issued, it may be appealed. The appeal process will be discussed in a future All Facilities Letter.

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 be sufficiently private to allow for review of confidential information. The CDPH auditor will then conduct an entrance conference with the facility's administrator or designee.

The facility will be provided a list of selected dates taken from the 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 NHPPD forms.

Facilities that use electronic payroll systems must provide the auditor with the requested documentation both electronically from those systems as well as on paper. Auditors may use other documents, as stated in Section 6 (b) "Documentation," to verify the accuracy of the payroll records.

Documents or records that are incomplete, illegible, or inaccurate shall not be accepted. Modifications made contemporaneously to the audit shall not be accepted. Documentation must delineate the time spent on nursing services and non-nursing services for those employees performing both nursing and non-nursing services. Failure to provide this information will result in the exclusion of all service hours.

Only direct caregivers shall be counted toward NHPPD.

The facility shall provide the auditor with the hourly patient census during the 24-hour patient day for all days requested. The facility shall provide the exact time it begins its patient day. The time will be used to determine compliance with the NHPPD for all audited days.

Auditors will be equipped with a laptop computer that includes the NHPPD database and a portable printer. Data collected from the documentation will be entered into the NHPPD database while the auditor is on-site. The database will compute the daily NHPPD. Once all data is entered, a report will be generated.

The automated calculation of 3.2 NHPPD shall be based on the (1) Patient day – the 24-hour period of time used to determine HSC Section 1276.5 compliance; (2) Patient census – the average census based on the hourly highest number of patients in the facility receiving nursing services during a patient day, and (3) Number of hours worked by direct caregivers.

Specifically, the standard of 3.2 NHPPD 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 auditor will conduct an exit conference with the facility administrator or designee to report the findings and conclude the audit process. This conference will be recorded.

B. Regulatory Enforcement

Upon a finding of non-compliance, a Statement of Deficiency will be issued for non-compliant days reviewed. A single deficiency will be issued for staffing noncompliance regardless of the number of non-compliant days. Facilities with non-compliant days will be responsible for submitting a plan of correction to the L&C Data Management Unit.

The facility will receive a finding of non-compliance with the 3.2 NHPPD requirement for each day audited that documentation is not provided. The facility will be responsible for submitting a plan of correction to the L&C Data Management Unit.

A notice of intent to issue an administrative penalty will be issued if the facility is in violation of HSC Section 1276.5. W&I Section 14126.022 requires the Department to assess a SNF an administrative penalty if the Department determines that the SNF fails to meet the NHPPD requirements pursuant to HSC Section 1276.5 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 an administrative penalty is issued, it may be appealed. The appeal process will be discussed in a future All Facilities Letter.

II. GUIDELINES

Section 1: Definitions

- (a) **Absent Patient** means a patient that is not in the facility or receiving services from the facility.
- (b) **Average Census** means the average of the hourly census during a patient day. Average census is determined by adding the hourly censuses for each hour of the patient day and dividing the total by 24. Any Average Census that results in a fraction or partial number will be rounded to the next highest whole number.
- (c) **Bed Hold** means a bed that is held for a patient that has been transferred to a General Acute Care Hospital or Acute Psychiatric Hospital for purposes of hospitalization or therapeutic leave.

- (d) **Department** means the California Department of Public Health (CDPH) or its designee.
- (e) **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. A person serving as the director of nursing services in a facility with 60 or more licensed beds cannot be a direct caregiver.
- (f) **Director of Nursing Services** means the description provided in CCR Title 22, Section 72327.
- (g) **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.
- (h) **Electronic Record** means documentation in an electronic format.
- (i) **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.
- (j) **Hourly Census** means the highest total number of patients in the facility receiving nursing services from direct caregivers during any one specific hour.
- (k) **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.
- (l) **Intermediate Care Facility (ICF)** means a facility described in HSC Section 1250(d).
- (m) **Intermediate Care Patient** means a patient receiving intermediate care and occupying a licensed intermediate care bed used exclusively for patients receiving intermediate care.
- (n) **Licensed Nurse** means a registered nurse or a licensed vocational nurse.
- (o) **NHPPD** means the actual nursing hours performed by direct caregivers per patient day.

- (p) **NHPPD Calculation** is the calculation of the NHPPD by dividing the actual nursing hours performed by direct caregivers per patient day by the Average Census.
- (q) **3.2 NHPPD Staffing Requirement** means the minimum number of actual nursing hours performed by direct caregivers per patient day.
- (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 Census** means the definition provided in Average Census.
- (v) **Patient Day** means a 24-hour period which is used to determine compliance with HSC Section 1276.5. The patient day can be no less and no longer than a 24-hour period.
- (w) **Skilled Nursing Facility** means the description provided in HSC 1250 (c).

Section 2: NHPPD Computation

- (a) The NHPPD calculation shall be determined 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 direct caregivers shall be staffed throughout the day to achieve a minimum of 3.2 NHPPD. Yet, skilled nursing facilities shall employ and schedule additional staff as needed to ensure patients receive nursing care based on their needs.
- (c) Any NHPPD that falls below 3.2 is out of compliance with the minimum standard.

Section 3: Direct Caregiver

Direct caregivers are defined in Section 1(e) of these guidelines and not determined by a facility's position title.

- (a) Only nursing hours performed by direct caregivers shall be included in the NHPPD 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.
 2. Performing nursing services.
- (c) 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, only time spent providing nursing services shall be included in calculating the NHPPD.
- (c) Activities that are not nursing services include:
 1. Paid or unpaid time spent on meal periods.
 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, activity programs as described in CCR Title 22, Section 72379 and Section 72381, administrative and financial recordkeeping, and administrative maintenance of health records.
 4. Nursing services that are provided in the same shift as 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 hourly census does not include Intermediate care patients.
- (b) Patients present for a partial hour will be included in that specific hour's patient census.
- (c) Patients who are documented as on a "bed hold" or as an "absent patient" for a full hour will not be counted in that specific hour's patient census.
- (d) The facility shall either create a census and NHPPD form or use the attached "Census and Nursing Hours per Patient Day" (CDPH 612 and instructions) to report daily NHPPD. This form must be signed by the Director of Nursing (or designee) verifying the information is true and accurate. The census and NHPPD 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 3.2 minimum NHPPD requirement for each day the form is not provided. Do not include patient names on the "Census and Nursing Hours per Patient Day" forms.

If the facility chooses to create a form, it must be substantially similar 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 Director of Nursing or designee
5. Patient census at start of patient day
6. Scheduled nursing hours and the scheduled NHPPD
7. For each specific hour of the patient day, the number of:
 - a. admissions
 - b. transfers in
 - c. other intakes that occurred
 - d. discharges
 - e. transfers out
 - f. deaths, and
 - g. other decreases that occurred
8. The highest patient census for each specific hour.
9. Total actual/final nursing hours
10. Average census
11. Actual NHPPD
12. An attestation statement signed by the Director of Nursing 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 will be expected to meet the following documentation requirements no later than 30 days from the date of this All Facilities Letter.

- (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. The "assignment sheet" must be typed or printed legibly and be substantially similar to the attached CDPH 530 and instructions. The Director of Nursing (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 3.2 minimum NHPPD requirement for each day the form is not provided.

The "assignment sheet" shall include the actual number of direct caregivers responsible for patients for that particular day on each shift. Only direct caregivers shall be recorded and only nursing hours shall be recorded. 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. Nursing services assignment by specifying each room and each bed that each direct caregiver is assigned during his/her shift
4. Assignment of each direct caregiver not assigned to a specific room or bed
5. Director of Nursing or designee, shift, and shift start time
6. Printed full employee name
7. Employee classification (such as CNA, RN, LVN, LPT)
8. Employee's original signature. Initials will not be accepted and the employee must sign for themselves. The employee's signature verifies that the information provided on the form is true and accurate.

If an assignment is vacant, an explanation must be included on the "assignment sheet". 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 3 through 8 above and the total hours worked. The times the direct caregiver began and ended the shift as well as began and ended his/her meal break must be documented. The facility shall document on the "assignment sheet," as indicated in guidelines 3 through 8 above, the registry, contract, or corporate staff who were direct caregivers.

- (b) Each facility shall maintain on-site current, complete and accurate personnel and payroll records for all employees. The facility shall provide the following documentation upon request:
1. Census and NHPPD (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, bedholds, and absent patients)
 8. A list of all direct caregivers who are not listed in the facility's payroll reports or timecards
 9. Health Facility License and all "Program Flex" or waiver documentation approving admissions beyond a facility's licensed bed capacity
 10. If applicable, records submitted to CMS, Medi-Cal, or insurance companies detailing the level of care provided to a resident for purposes of reimbursement
 11. 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 and proof of a criminal background clearance
 - (M) For registry, temporary, or contract employees, the name of the temporary health services personnel agency.
- (c) Documentation listed in subsections (a) and (b) shall be retained for at least three years following employment termination. No less than 90-days of documentation shall be maintained and 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 both electronically from those systems as well as on paper. If the facility does not have the capability to produce electronic records, then paper documentation will be accepted.
- (d) The facility will receive a finding of non-compliance with the 3.2 NHPPD requirement for each day audited that documentation is not provided.
- (e) Meal periods will be deducted from the total nursing hours for the timeframes identified on the "assignment sheet". Meal periods not identified on the "assignment sheet" will automatically be deducted from the total nursing hours at the rate of 30 minutes for every 6 hours worked or 1 hour for every 10 hours

worked unless the facility provides documentation that nursing services were continuously performed in lieu of a meal break.

- (f) The requirements detailed in Sections 5 and 6 do not supersede federal regulations detailed in Title 42, Chapter 5, Part 483.30(e). Requirements in Sections 5 and 6 may be combined with the federal requirements as long as both requirements are met.

If you have questions regarding this AFL, please send an e-mail to:
L&CStaffingAudits@cdph.ca.gov.

Sincerely,

Original Signed by Pamela Dickfoss

Pamela Dickfoss
Acting Deputy Director
Center for Health Care Quality

Attachments

Census and Nursing Hours Per Patient Day (NHPPD)

1. PATIENT DATE (MM/DD/YY) _____ 2. PATIENT DATE START TIME _____
 (HH:MM AM/PM)
3. TOTAL LICENSED SKILLED NURSING BEDS _____ 4. CDPH LICENSE # _____
5. FACILITY NAME _____
6. FACILITY ADDRESS _____
7. ADMINISTRATOR _____
8. DIRECTOR OF NURSING/DESIGNEE _____

9. SCHEDULED NURSING HOURS and NHPPD															
A	BEGINNING PATIENT CENSUS:					B	SCHEDULED TOTAL NURSING HOURS:					C	SCHEDULED NHPPD:		

10. HOURLY CENSUS CHANGES															
A	B	C	D		A	B	C	D		A	B	C	D		
Time	Number In	Number Out	Hourly Census		Time	Number In	Number Out	Hourly Census		Time	Number In	Number Out	Hourly Census		
12 AM					4 PM					8 AM					
1 AM					5 PM					9 AM					
2 AM					6 PM					10 AM					
3 AM					7 PM					11 AM					
4 AM					8 PM					12 PM					
5 AM					9 PM					1 PM					
6 AM					10 PM					2 PM					
7 AM					11 PM					3 PM					
8 AM					12 AM					4 PM					
9 AM					1 AM					5 PM					
10 AM					2 AM					6 PM					
11 AM					3 AM					7 PM					
12 PM					4 AM					8 PM					
1 PM					5 AM					9 PM					
2 PM					6 AM					10 PM					
3 PM					7 AM					11 PM					

11. ACTUAL NURSING HOURS and NHPPD															
This section must be completed at the end of each 24-hour patient day.															
A	TOTAL ACTUAL NURSING HOURS:					B	AVERAGE CENSUS:					C	ACTUAL NHPPD:		

12. I have reviewed the patient census and nursing hours information and acknowledge the information is true and correct.

X _____
 Director of Nursing/Designee Signature

Census and Nursing Hours Per Patient Day (NHPPD)

INSTRUCTIONS

- The information on this form must be legible, accurate and complete.
- All patients receiving nursing services and who are present in the facility during the patient day will be counted in the patient census.
- Only direct caregivers with a nursing services assignment shall be included in the NHPPD.
- To verify this form is complete, true and accurate, the Director of Nursing or his/her designee must sign this form.
- Do not include patient names.
- For a definition of NHPPD, hourly census, direct caregiver, nursing hours, or nursing services, please see All Facilities Letter 10-33.

1. Enter the date of the patient day in MM/DD/YY format.

2. Enter the start time of the patient day in HH:MM AM/PM format. Patient day must be prospective. For example, the patient day will never begin on "11pm the previous day".

3. Enter the total number of licensed skilled nursing beds for the facility.

4. Enter the CDPH license number for the facility.

5. Enter the facility name.

6. Enter the facility address.

7. Enter the name of the facility administrator.

8. Enter the name of the person who has Director of Nursing responsibility for the day.

9. In 9.A., enter the beginning census of the patient day.

In 9.B., enter the total number of scheduled nursing hours for the patient day.

In 9.C., calculate the scheduled NHPPD by dividing 9.B. by 9.A. ($9.B. \div 9.A. = 9.C.$)

10. In column A, locate the beginning time of your patient day. In column B of that line, enter the total number of patients who have been admitted, transferred in, and other intakes that occurred during that specific hour. In column C of that line, enter the total number of patients who were discharged, transferred out, deaths, and other decreases that occurred during that specific hour. In column D, enter the highest patient census for that specific hour.

In each consecutive line continue to enter the same information for every hour of the patient day, for a total of 24 hours. The form has extra lines that you will not use. You will only use 24 consecutive lines (hours) on each form.

11. In 11.A., at the conclusion of the patient day record the total actual nursing hours.

In 11.B., calculate the average census by adding all of the 24 hourly censuses and divide the total by 24.

In 11.C. calculate the actual NHPPD by dividing 11.B. by 11.A. ($11.B. \div 11.A. = 11.C.$)

12. At the conclusion of each patient day, the Director of Nursing or his/her designee shall review the information documented and sign the form verifying that the information is complete, true, and correct.

NURSING STAFFING ASSIGNMENT AND SIGN-IN SHEET

1. FACILITY NAME _____ 2. DATE OF PATIENT DAY (MM/DD/YY) _____

3. DIRECTOR OF NURSING/DESIGNEE _____

4. SHIFT 1 2 3 5. SHIFT START TIME (HH:MM AM/PM) _____

6. STATION/WING/UNIT/FLOOR _____

7.

NURSING SERVICES ASSIGNMENT	EMPLOYEE NAME	DISCIPLINE	SHIFT START/END	MEAL BREAK START/END	EMPLOYEE SIGNATURE
					X
					X
					X
					X
					X
					X
					X
					X

8. I have reviewed and verified all staffing assignments are true and accurate. All direct caregivers that provided nursing services during the patient day are recorded and all nursing hours to be included in Nursing Hours Per Patient Day are accounted for with an original signature.

X _____
DIRECTOR OF NURSING/DESIGNEE SIGNATURE

NURSING STAFFING ASSIGNMENT AND SIGN-IN SHEET INSTRUCTIONS

All direct caregivers with nursing services assignments included in the Nursing Hours per Patient Day (NHPPD) shall be documented on the Nursing Staffing Assignment and Sign-In Sheet. This includes nursing management, supervisors, registry, contract, and corporate staff.

The Nursing Staffing Assignment and Sign-In Sheet must be legible. All employee names must be legible and include both first and last name.

Corrections and modifications must be completed on the Nursing Staffing Assignment and Sign-In Sheet to document employee absences, substitutions, and/or schedule changes. Legible pen/ink changes are acceptable.

Each direct caregiver included on the Nursing Staffing Assignment and Sign-In Sheet must provide a legible, original, written signature next to their printed name. This signature verifies the employee was present in the facility, provided nursing services, and actually worked the hours stated. Initials are not acceptable.

Only the employee that worked the nursing assignment may sign for him/herself.

All assignments on the form must be accounted for by either a signature or with a reason why the assignment was vacant.

The form must be signed by the Director of Nursing or his/her designee verifying the information on the Nursing Staffing Assignment and Sign-In Sheet is complete, true and accurate.

1. Enter the facility name.
2. Enter the date of the patient day in MM/DD/YY format.
3. Enter the name of the person who has Director of Nursing responsibility for the day.
4. Circle the appropriate shift: one, two or three.
5. Enter the shift start time in HH:MM AM/PM format.
6. If applicable, enter the name of the specific location in the facility for the patient assignments.
7. **Record only direct caregivers with a nursing assignment.** Enter the specific patient assignment and the employee's name responsible for the patient assignment. Enter the employee's discipline (RN, LVN, CNA, NA, Psych Tech). Enter the employee's exact shift start and end time. Enter the start and end time of the employee's meal breaks. The employee must sign the form.
8. At the conclusion of each patient day, the Director of Nursing or his/her designee shall sign the form verifying the nursing assignments are true and accurate and that all assignments are accounted for with an employee signature, or state a reason why the assignment was vacant.

