Workforce Shortage Waiver of 3.5 and/or 2.4

Please note the purpose of the following draft language is to help guide our discussion of the workforce shortage waiver and in no way represents the final guidelines for this waiver.

Effective July 1, 2018, all freestanding skilled nursing facilities (SNFs) excluding distinct parts of general acute care hospitals (GACHs), state-owned hospitals, or developmental centers are required to increase staffing from the current 3.2 to 3.5 direct care service hours with a minimum of 2.4 of those hours being performed by certified nurse assistants (CNAs).

Health and Safety Code 1276.65 (I) requires the Department to develop a waiver process for SNFs seeking a waiver of the 3.5 overall direct care service hour requirement and/or the 2.4 CNA requirement due to a workforce shortage. (A waiver to the 3.5 overall direct care service hour requirement would still require the facility to comply with the 3.2 overall direct care service hour requirement.) A SNF seeking a workforce shortage waiver must submit a request to the Department.

Guidelines for Waiver Application

A. SNFs must submit a waiver request with evidence to support the workforce shortage that may include, but is not limited to the following:
   1. Office of Statewide Health Planning and Development data identifying registered nurse (RN) shortages in the county where the facility is located.
   2. Department of Labor Reports with CNA, RN, and/or licensed vocational nurse (LVN) salary ranges in the county where the facility is located and the facility’s salary ranges for CNAs, RNs, and LVNs
      Bureau of Labor Statistics website:
      (https://www.bls.gov/oes/current/msa_def.htm#C)

B. SNFs must submit evidence of efforts to address the workforce shortage that may include, but is not limited to the following:
   1. A detailed description of the facility’s recruitment plan, including how the facility has implemented the plan and for how long
   2. When, where, and how long the facility advertised the vacancies
   3. The length of the vacancy or vacancies
   4. How many applicants applied to the position(s)
   5. How many applicants the facility interviewed and hired
   6. The salary for the position
   7. Other recruitment and retention activities
   8. Detail the use of registry services, if available, to fill vacant positions
C. SNFs must provide a detailed plan that specifies actions the facility will take to resolve its workforce shortage, how the facility will implement those actions, and time frames for the action plan.

D. SNFs must provide a detailed plan that specifies how the facility will meet residents’ needs and ensure quality care despite the workforce shortage.

Evaluation of Waiver Requests

A. In evaluating workforce shortage waiver applications, the Department will consider whether the facility:
   1. Complies with state and federal regulations
   2. Had its license suspended or revoked
   3. Provided complete and accurate documentation of the workforce shortage
   4. Demonstrated recruitment efforts to address the workforce shortage
   5. Is located in a rural area
   6. Provided an acceptable plan to achieve compliance with the 3.5 and/or 2.4 staffing standard based on the particular situation of the facility

B. In evaluating a workforce shortage waiver renewal application, in addition to the factors listed above, the Department will consider whether the facility effectively implemented the action plan to comply with the 3.5 and/or 2.4 staffing standards.

Processing Waiver Requests

A. When the Department receives a workforce shortage waiver request, the Department will send the facility an acknowledgment letter.

B. The Department may also send a letter requesting additional information.

C. When the Department has completed its review, the Department will inform the facility in writing whether it has approved or denied the waiver.

   1. The Department will determine whether to approve or deny waiver requests on a case-by-case basis.
   2. A facility seeking an initial waiver more than seven months prior to its licensure renewal date will need to resubmit their waiver request at the time of licensing renewal.
   3. A facility seeking to extend a waiver beyond the first year must resubmit a new application.
   4. The Department will not grant more than three consecutive waiver renewals.
5. If the Department denies a waiver request, the facility cannot appeal the decision and must wait one year from the date of the denial letter before reapplying.

If approved, the facility must post the waiver in a public location within the facility. The Department will enter the facility’s waiver status in the Electronic Licensing Management System (ELMS) and post the waiver status on the Department’s website with other facility-specific consumer information.