



**Department
of Health**

Nursing Home Minimum Nursing Staff Requirements

**Public Health Law §2895-b & 10 NYCRR §415.13 Minimum
Staffing Level Compliance Reviews**

Topics

- Initial Determination (Accessing and Understanding)
- Request for Redetermination (Timelines and Information to be Provided)
- Facility Request for Penalty Reduction (Application, Evidentiary Requirements, and Confirmations)
- Best Practices

Public Health Law §2895-b 10 NYCRR §415.13

- Public Health Law §2895-b establishes Minimum Nursing Staffing Standards for New York State Nursing Homes.
- Beginning April 1, 2022, nursing homes must provide, at minimum:
 - **1.1** hours of care per resident per day (HPRD) by Licensed Practical Nurse (LPN) or Registered Nurse (RN)
 - **2.2** HPRD by Certified Nurse Aide (CNA) (for 2022 includes nurse aides)
 - **3.5** HPRD by the titles referenced above.

Initial Determination

Initial Determination

- Initial determinations are based on a review of the Centers for Medicare & Medicaid Services (CMS) **Payroll Based Journal (PBJ)**.
- If the facility receives a **Notice of Compliance for the quarter**, **no additional action is required** by the facility for that quarter.
- If the facility receives a **Notice of Non-Compliance for the quarter**
 - They may take the following actions:
 - If the nursing home believes the initial determination of non-compliance was due to an error in the PBJ, or miscalculation by the Department, you will have the **opportunity to request a redetermination**
 - If the nursing home believes you can demonstrate the mitigating or aggravating factors set forth in 10 NYCRR § 415.13, you will have the **opportunity to request a penalty reduction**
 - All determinations of non-compliance will be referred for Enforcement to the Division of Legal Affairs

Initial Determination (continued)

- Available in **Health Commerce Distribution Management System (HCDMS)**
- Facilities must ensure proper Health Commerce System (HCS) roles are established
 - **Administrator and Operator** roles in HCS are current
- Organization's **HCS Coordinator** can update roles
- If problems with your HCS account, please contact the **Commerce Account Management Unit ([CAMU](#))**
 - camu@its.ny.gov
 - 1-866-529-1890 Option 1

Accessing Notifications in HCDMS

- Method 1: Link in HCDMS email to Administrator and Operator HCS Roles
 - My Distributions
 - Minimum Nursing Staffing Compliance (contains all completed review periods)
- Method 2: Log in to HCS Home Page
 - My Content Dropdown
 - All Applications
 - Health Commerce Distribution Management System (HCDMS)
 - My Distributions
 - Minimum Nursing Staffing Compliance (contains all completed review periods)
- If problems accessing your facility's notification when proper roles are assigned, please contact us at NHSafeStaffing@health.ny.gov

Initial Determination (continued)

- Facility has **10 business days**, from the date on the notice, to request a redetermination or penalty reduction.
- Date on the Non-Compliance Notification Letter is Day 0
- The 10-business day window closes after of 11:59pm on Day 10
- Example: Notice of Non-Compliance is dated August 3, 2023

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3 DAY 0	4 DAY 1	5
6	7 DAY 2	8 DAY 3	9 DAY 4	10 DAY 5	11 DAY 6	12
13	14 DAY 7	15 DAY 8	16 DAY 9	17 DAY 10	18	19

Redetermination Requests

Redetermination Request

- Must be submitted **prior to the 10-business day deadline** (11:59pm on Day 10)
- If determined to not be in compliance, a **second Notice of Non-Compliance** will be issued
 - The second Notice of Non-Compliance will set a **new 10-business day deadline for a Penalty Reduction Request**.
 - If a Penalty Reduction is sought, the deadline for submission of the Request Application will be based on the date in the second Notice of Non-Compliance
- Facilities that request a Redetermination must wait until they receive their second compliance notice containing the Redetermination results prior to submitting a Penalty Reduction Request Application.

Redetermination Request Submission

- Must include:
 - A completed **Department issued Electronic Redetermination Request form** (accessible via notice)
 - **Department Issued Employee Detail Attachment form**
- **Substitutions for the Employee Detail Attachment will not be accepted**
- The request must clearly state what **period of time is covered** and **how the submitted data is to be used**.
 - Narrative regarding this should be included in the section of the online form titled: “Reason for requesting redetermination”

Request Submission (continued)

- Online Form:
 - Reason for requesting redetermination – please describe **what the perceived error is and how the submitted data is to be used**
 - Facility Name – name of the facility **as cited on the facility's Operating Certificate**
 - Federal Provider Number – **Six-digit Medicare Provider Number**
 - This is not the facility's Taxpayer Identification Number (TIN) or National Provider Identifier (NPI).
 - Compliance Year + Quarter – Four-digit year and the calendar quarter

Request Submission (continued)

- Employee Shift Detail – upload “Redetermination Request Employee Detail Attachment XLSX”. The template can be downloaded [here](https://www.health.ny.gov/facilities/nursing/minimum_staffing/docs/request_for_redetermination_employee_detail_attachment.xlsx).
https://www.health.ny.gov/facilities/nursing/minimum_staffing/docs/request_for_redetermination_employee_detail_attachment.xlsx
- Attestation / Point of Contact – please note: **the confirmation email will be sent to the email addresses included in this section.**
- Employee Detail Attachment
 - Facility Name – please see instructions above
 - Medicare Provider Number - please see instructions above
 - Calendar Quarter - please see instructions above

Request Submission (continued)

- Enter **each shift completed by your staff members** that would impact the calculation of the facility's hours during the period:
 - **Workdate** - the day the staff member worked in the following format: MM/DD/YYYY
 - **SYS_EMPLEE_ID** - The staff member's 'System Employee ID', as typically reported to the CMS PBJ **or** a Unique Identifier used for the staff member
 - **EMPLEE_JOB_CD_ID** – the number matching **the Job Title code for that shift**
 - Include the Job Codes below (additional job codes are not needed):

5 = RN Director of Nursing	8 = LPN with Administrative Duties
6 = RN with Administrative Duties	9 = Licensed Practical Nurse (LPN)
7 = Registered Nurse (RN)	10 = Certified Nurse Aide
	11 = Nurse Aide in Training

Request Submission (continued)

- **WORK_HRS_NUM** - the number of hours the staff member worked on that day. Numbers only.
- **INCOMPLETE*** - if the facility has incomplete staffing data for this employee day, please enter a “1” in this field
- CENSUS (Column I and column J)
 - **CENSUS DATE** – date in following format: MMDDYYYY
 - **TOTAL RESIDENT CENSUS** (Occupied Beds) – residents present as of 12am on the date cited
 - For the Census information:
 - You only need to **include each day once**
 - The census data is always required if the facility did not appear in the Payroll Based Journal

Examples

- Scenario 1: Facility did not complete PBJ for the quarter
 - For each day, the facility must include all employee detail information for all employees in the appropriate titles and complete the census information
- Scenario 2: Facility erroneously coded a staff member with an excluded job code (e.g., RN with Administrative Duties vs. RN)
 - For each shift that the employee was miscoded, provide all employee detail information for each miscoded shift and employee.
- Scenario 3: Facility is adding employee hours
 - For each shift that the facility wants added to the calculation, provide all employee detail information
- Scenario 4: Facility is disputing PBJ Census
 - Complete the Census information, the two columns on the right of the attachment

Examples (cont.)

- Scenario 5: Switched employee job codes (e.g., miscoded CNAs as LPNs)
 - For any day **impacted by the switch**, the facility must provide employee detail information for all employees in the titles *impacted by the miscoding* and all employee shifts on that day for those titles
 - Example: Employee A is CNA, Employee B is a CNA, Employee C is an LPN, and Employee D is an RN. All four work on one day.
 - Employee B (CNA) was miscoded as an LPN
 - In the Employee Detail Attachment, include the shifts for Employees A (CNA), B (CNA), and C (LPN).
 - We do not need the hours for Employee D (RN).

Certified Nurse Aides (CNA)

- 415.13(b)(1)(ii)
 - Defines CNA as “...any person **included in the nursing home nurse aide registry** pursuant to Section 2803-j of the Public Health Law.”
 - The Department **cannot count hours of service provided by persons who are not listed on the nursing home nurse aide registry** toward compliance with minimum certified nurse aide standards established under Section 415.13.

Redetermination Questions - General

- If additional information is necessary to complete our assessment:
 - The program staff reviewing your request will contact you to request any additional information required
 - When requested, please **provide this information in timely fashion**
- Issues regarding reporting to CMS must be **addressed directly with the CMS**

Penalty Reduction Application

Penalty Reduction Request Application

- When facility believes they can demonstrate **mitigating or aggravating factors set forth in 10 NYCRR 415.13**
- Must submit Department issued electronic request form (accessible via notice) and provide required information and evidentiary documents (subject to requests for further information)

Mitigating or Aggravating factors during Quarter

- **Schedule A** - Extraordinary Circumstances: natural disaster; declared emergency (national, State or municipal); catastrophic event
- **Schedule B** - Acute Labor Supply Shortage based on facility's location (as determined by the Commissioner of Health)
- **Schedule C** - Verifiable Union Dispute

Penalty Reduction Request Application (continued)

- Do not submit supporting documentation that includes anyone's Protected Health Information or the Personal Identifiable Information of the residents. If submitted, it will not be considered as a part of the Penalty Reduction Application.
- Examples (but not limited to)
 - Health information for specific employees
 - Names and/or SSNs of the residents of the facility

Schedule A

- Completed if the facility believes they can demonstrate the mitigating or aggravating factor of an Extraordinary Circumstance as set forth in 10 NYCRR 415.13.
 - Please also refer to the July 6, 2023, Nursing Homes Standards Webinar Presentation (slide 4), available on the Department of Health (DOH) Nursing Home Minimum Staffing and Direct Resident Care Spending webpage at https://health.ny.gov/facilities/nursing/minimum_staffing/index.htm
- The Department will review each Schedule A submitted to assess
 - Whether the circumstances articulated therein amount to an “Extraordinary Circumstance” within the meaning of the statute and regulations
 - Demonstration, to the satisfaction of the Department, that the circumstance prevented compliance.

Schedule B

- May be completed only if Commissioner of the Department of Health determined Acute Labor Supply Shortage in facility's location for the quarter of non-compliance
- Must include:
 - A narrative outlining **the steps the facility took to ensure the health and safety of the resident population** during the period of non-compliance
 - Information and documentation to **demonstrate reasonable attempts that were made in the quarter.**
 - Attempts made outside of the quarter will not be accepted

Resident Health and Safety

Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(b)(3)

The fact that the facility is located in an area experiencing an acute labor supply shortage pursuant to 10 NYCRR 415.13(f)(2)(ii)(b) shall not serve as a mitigating factor unless the facility has demonstrated, to the satisfaction of the Department, that it has taken steps over the course of the quarter to ensure resident health and safety notwithstanding any labor supply shortage

Resident Health and Safety

Information Requested: Narrative outlining the steps the facility took to ensure the health and safety of the resident population during the period of labor shortage and specific to the quarter covered by the application.

- Additional measures taken beyond recruitment
- Strategic measures employed to avoid the following events:
 - Adverse drug events
 - Resident falls or safety events
 - Resident observation events, for example bed sores or infections
 - Other clinically significant or urgent/emergent matters
- Consider efforts implemented to address the labor shortage, for example common measures on next slide

Resident Health and Safety

Common Measures Examples to Consider

- Cross or focused training efforts
- Maximizing utilization of existing staff
- Policy or protocol revision
- Care planning
- Audits or internal review measures
- Streamlined processes
- Prioritization
- Closure of units or revised admission processes
- Improved communication efforts
- Enhanced infection control
- Other efforts taken to promote resident health and safety

Resident Health and Safety Surveillance

The Department reserves the right to review information submitted against any surveillance activity for the quarter that may indicate an immediate jeopardy or harm level deficiency related to insufficient nurse staff.

Penalty Reduction Application

Reasonable Attempts

- Carefully read the instructions provided in the application
- Select only the instructed number of reasonable attempts in each category, ensuring you can provide the information and documentation required
- Ensure you select the applicable titles for the reasonable attempt . Not necessary to submit reasonable attempts for titles for which the facility was in compliance in the quarter.
- Submit only documents for reasonable attempts pursued during the period of non-compliance
- Provide all information and documentation requested in the application
- Ensure documentation contains sufficient information to support the claim and is legible
- Ensure submitted contracts are fully executed

Reasonable Attempts

Recruitment Efforts

- New Agency Contract/Recruiters: Effective Date, Agency Name, Titles covered, Copy of Contract/Agreement
- Job Fairs or Hiring Events: Event Date, Event Name, Titles Covered, Event Distribution Materials, Copy of Organizer Confirmation or Hosted Event Description
- Multimedia or Print Advertising: Advertisement Date or Campaign Start Date, Agency or Vendor Name, Titles Covered, Copy of Advertisement, Copy of Agreement or Vendor Confirmation
- Continued next page

Reasonable Attempts

Recruitment Efforts (continued)

- Online Job Advertisement: Posting Date or Campaign Start Date, Website or Vendor Name, Titles Covered, Copy of Advertisement, Copy of Agreement or Confirmation
- Partnership (Education Institutions): Effective Date, Partner Name, Titles Covered, Copy of Agreement, Summary of Relationship
- Partnership (Other Healthcare Facility): Effective Date, Partner Name, Titles Covered, Copy of Agreement, Summary of Relationship
- Other: Description of Effort, Effective Date, Titles Covered, Supporting Documentation. (Department will determine if additional information is required)

Reasonable Attempts

Job Enhancements - Prospective Employees

- Base Salary Increase and/or Benefits Increase: Effective Date, Titles Covered, Prior and New Salary Schedules or Copy of Benefits Package and Description of Benefits Change
- Cash Bonus: Effective Date, Titles Covered, Bonus Amount, Bonus Announcement/Promotion
- Relocation Assistance: Effective Date, Titles Covered, Materials Promoting Assistance Program
- Sponsoring International Candidates: Sponsor Authorization Request (Application) Date, Titles Covered, Request Details and Disposition
- Other: Description of Effort, Effective Date, Titles Covered, Supporting Documentation (Department may request additional information).



Reasonable Attempts

Enhanced Productivity – Current Employees

- Transportation Assistance: Effective Date, Title Covered, Assistance Description, Eligibility Terms
- Increased Pay– Base Salary or Shift Differentials: Effective Date, Titles Covered, Prior and New Salary Schedule and/or Shift Pay Rate
- Upskilling: Effective Date of Program, Titles Covered, Training Description and Purpose (e.g., CNA to LPN advancement)
- Other: Description of Effort, Effective Date, Titles Covered, Supporting Documentation (Department may request additional information).

Reasonable Attempts

- Other (Categories not included in Application):
 - Date of Attempt
 - Titles Covered,
 - Attempt Description
 - Supporting Documentation to Demonstrate Attempt
 - Department may request additional information

Reasonable Attempts

- Only submit documents pertaining to the reasonable attempt categories which were pursued by the facility during the period of non-compliance.
- Facilities **are not required to submit documentation for every reasonable attempt listed** on the application for the defined **Category**. The application will provide guidance for each Category.
- **Not necessary to submit reasonable attempts for titles where the facility was in compliance** in the quarter.
 - Example: facility had 1 hour per resident day of RN/LPN services, 2.6 hours per resident day of CNA services and 3.6 hours per resident day overall
 - The facility would only need to submit reasonable attempts recruit RNs and LPNs.

Reasonable Attempts (continued)

- Duplicate documents are not needed.
- When completing the application, be sure to **read the instructions provided for each Category and each Reasonable Attempt.**
- **Internet links provided to online job websites (Indeed, Glassdoor, Applooi etc.) will not be considered as documentation** of a reasonable attempt.
 - Documentation must support the facility's assertion that the reasonable attempt occurred during their period of non-compliance
 - Links can be blocked by various means or are subject to "link rot"
- Submitted documents must be legible
- Reasonable attempts must apply to registered nurses, licensed practical nurses, and certified nurse aides only.

Schedule C

- May be completed if the facility believes they can demonstrate the mitigating factor of a verifiable union dispute contributed to their noncompliance
- **Union Disputes will be expected to impact staffing levels during the quarter under review.** Union disputes which have no direct impact on staffing levels will not factor into a potential penalty reduction determination.
- Please provide the specific information requested in the instructions.
 - Dispute Start Date
 - Dispute End Date (if applicable)
 - Titles impacted
 - Union Name
 - Dispute Disposition
 - Strike Plan
 - Strike Notice

General Best Practices

- Please note, the Penalty Reduction Application electronic platform does not support a saving feature at this time. We advise using the guidance in this presentation to prepare for anticipated future submissions.
- It is recommended that facilities check with their IT department regarding internal settings.
 - If you are having difficulty completing the application, it may be due to internal conditions or settings.
 - Please be advised that this is the same platform that has been used by nursing home providers for electronic incident reporting.
- Facility's quarterly reporting to the CMS must be completed by the CMS due date and must contain data which is an accurate representation of daily staffing levels.

General Best Practices (continued)

- 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>
- Contact us at NHSafeStaffing@health.ny.gov if you have questions.

NHSafeStaffing@health.ny.gov