

# STATE OF NEW YORK

7119

2021-2022 Regular Sessions

## IN ASSEMBLY

April 22, 2021

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to establishing standard nursing home staffing levels

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public health law is amended by adding a new section  
2 2895-b to read as follows:

3 § 2895-b. Nursing home staffing levels. 1. Definitions. As used in  
4 this section, the following terms shall have the following meanings:

5 (a) "Certified nurse aide" means any person included in the nursing  
6 home nurse aide registry pursuant to section twenty-eight hundred  
7 three-j of this chapter.

8 (b) "Licensed nurse" means a registered professional nurse or licensed  
9 practical nurse licensed pursuant to article one hundred thirty-nine of  
10 the education law.

11 (c) "Staffing hours" means the hours reported by a nursing home to the  
12 federal Centers for Medicare and Medicaid Services through the payroll  
13 based journal for long-term care facilities.

14 (d) "Nurse aides" means any person who is included in the nurse aide  
15 hour component of the payroll based journal for long-term care facili-  
16 ties but has not yet been certified as a certified nurse aide.

17 2. Staffing standards. (a) The commissioner shall, by regulation,  
18 establish staffing standards for nursing home minimum staffing levels to  
19 meet applicable standards of service and care and to provide services to  
20 attain or maintain the highest practicable physical, mental, and psycho-  
21 social well-being of each resident of the facility. Compliance shall be  
22 determined quarterly by comparing the daily average of the number of  
23 hours provided per resident, per day, using the federal Centers for  
24 Medicare and Medicaid Services payroll based journal and the facility's  
25 average daily census on a daily basis.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) The commissioner shall establish, by regulation, civil penalties  
2 for facilities out of compliance with minimum staffing levels. Such  
3 regulations shall include a range of penalties to account for mitigating  
4 factors which shall include:

5 (i) extraordinary circumstances facing the facility, including, but  
6 not limited to, whether the facility has suffered through a natural  
7 disaster or other catastrophic event, an officially declared national  
8 emergency, or state or municipal emergency declared pursuant to article  
9 two-B of the executive law, which has been initially declared subsequent  
10 to the effective date of this section, or other such conditions or  
11 unforeseen circumstances as determined by the commissioner;

12 (ii) the frequency and nature of non-compliance; and

13 (iii) the existence of an acute labor supply shortage within a partic-  
14 ular region. When determining if there is an acute labor supply short-  
15 age within a specific region in a specific quarter, or a shorter period  
16 of time as determined by the commissioner, the commissioner shall take  
17 into consideration the following factors: regional labor supply of  
18 available certified nurse aides, licensed practical nurses and regis-  
19 tered nurses; regional pay rates for the relevant titles as determined  
20 by the federal department of labor, bureau of labor statistics; and  
21 evidence that the facility attempted to procure sufficient staffing.

22 (c) At least thirty days before any action is taken by the commis-  
23 sioner under paragraph (b) of this subdivision, the commissioner shall post  
24 the assessed penalties, and any mitigating factors that were considered  
25 in assessing the penalty on the department's website.

26 (d) In determining whether a nursing home has violated its obligations  
27 under this section, it shall not be a defense that such nursing home was  
28 unable to secure sufficient staff if the lack of staffing was foreseea-  
29 ble and could be prudently planned for, or involved routine staffing  
30 needs that arose due to typical staffing patterns, typical levels of  
31 absenteeism, or time off typically approved by the employer for vaca-  
32 tion, holidays, sick leave, and personal leave.

33 (e) A civil penalty shall not be imposed under this section until  
34 after April first, two thousand twenty-two;

35 (f) Every nursing home shall:

36 (i) comply with the staffing standards under this section; and

37 (ii) employ sufficient staffing levels to meet applicable standards of  
38 service and care and to provide service and care and to provide services  
39 to attain or maintain the highest practicable physical, mental, and  
40 psychosocial well-being of each resident of the facility.

41 (g) Staffing standards established under this subdivision shall, at a  
42 minimum, be the staffing standards established under subdivision three  
43 of this section.

44 (h) The minimum staffing standard includes the hours which are  
45 required to be reported by a nursing home to the federal Centers for  
46 Medicare and Medicaid Services through the payroll based journal for  
47 long-term care for certified nursing assistants and licensed nurses. In  
48 determining compliance with the staffing standards under this subdivi-  
49 sion, an individual shall not be counted while performing administrative  
50 services as defined in the payroll based journal for long-term care  
51 facilities.

52 3. Statutory standard. (a) Beginning January first, two thousand twen-  
53 ty-two every nursing home shall maintain daily average staffing hours  
54 equal to 3.5 hours of care per resident per day by a certified nurse  
55 aide, a licensed nurse or a nurse aide; provided that out of such 3.5  
56 hours, no less than 2.2 hours of care per resident per day shall be

1 provided by a certified nurse aide or a nurse aide, and no less than 1.1  
2 hours of care per resident per day shall be provided by a licensed  
3 nurse.

4 (b) Beginning January first, two thousand twenty-three and thereafter  
5 every nursing home shall maintain daily average staffing hours equal to  
6 3.5 hours of care per resident per day by a certified nurse aide or a  
7 licensed nurse; provided that out of such 3.5 hours, no less than 2.2  
8 hours of care per resident per day shall be provided by a certified  
9 nurse aide, and no less than 1.1 hours of care per resident per day  
10 shall be provided by a licensed nurse.

11 4. Public disclosure of staffing levels. (a) A nursing home shall post  
12 information regarding nurse staffing that the facility is required to  
13 make available to the public under section twenty-eight hundred five-t  
14 of this chapter. Information under this paragraph shall be displayed in  
15 a form approved by the department and be posted in a manner which is  
16 visible and accessible to residents, their families and the staff, as  
17 required by the commissioner.

18 (b) A nursing home shall post a summary of this section, provided by  
19 the department, in proximity to each posting required by paragraph (a)  
20 of this subdivision.

21 § 2. If any provision of this act, or any application of any provision  
22 of this act, is held to be invalid, or to violate or be inconsistent  
23 with any federal law or regulation, that shall not affect the validity  
24 or effectiveness of any other provision of this act, or of any other  
25 application of any provision of this act, which can be given effect  
26 without that provision or application; and to that end, the provisions  
27 and applications of this act are severable.

28 § 3. This act shall take effect immediately.