

New Nursing Home Staffing Level Requirements

FEATURED ATTORNEY



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On June 18, 2021, the Public Health Law was amended by adding § 2895-B, which establishes standard staffing levels for [nursing homes](#).

Compliance shall be determined quarterly by comparing the daily average of the number of hours provided per resident, per day, using the federal Centers for Medicare and Medicaid Services payroll based journal and the facility's average daily census on a daily basis.

Civil penalties will be established for non-compliance and account for mitigating factors as determined by the Commissioner of the Department of Health. Civil penalties shall not be imposed until after April 1, 2022.

Inability to secure sufficient staff shall not be a defense if the lack of staffing was foreseeable and could be prudently planned for or involved routine staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, or time off typically approved by the employer for vacation, holidays, sick leave, and personal leave.

Beginning January 1, 2022, a nursing home must maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide ("CNA"), a licensed nurse, or a nurse aide; provided that no less than 2.2 hours of care per resident per day shall be provided by a CNA or a nurse aide; and no less than 1.1 hours of care per resident per day shall be provided by a licensed nurse.

Beginning January 1, 2023, and thereafter, every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a CNA or a licensed nurse; provided that no less than 2.2 hours of care per resident per day shall be provided by a CNA, and no less than 1.1 hours of

care per resident per day shall be provided by a licensed nurse.

Nursing homes are required to post a public disclosure of staffing levels. This information shall be displayed in a form approved by the Department of Health and posted in a manner which is visible and accessible to residents, their families, and staff, as required by the Commissioner.

The [healthcare attorneys](#) at Abrams Fensterman, LLP are committed to providing you with the most current and accurate information and guidance. If you have any questions, please contact [Patrick Formato, Esq.](#), [Barbara Stegun Phair, Esq.](#), [Frank Mazzagatti, Esq.](#), [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.