

Direct Care Spending and Minimum Staffing Regulations Adopted



The Public Health and Health Planning Council (PHHPC) today approved final regulations governing nursing home spending on direct care and final regulations on minimum staffing. The regulations implement legislation passed earlier this year, and will:

- Require nursing homes to spend 70% of revenue on direct resident care, and 40% of revenue on resident facing staffing
- Provide for State recoupment of “excessive” nursing home operating revenue, if such revenue exceeds a facility’s operating and non-operating expenses by greater than 5%
- Mandate that nursing homes maintain daily staffing hours equal to 3.5 hours of care per resident per day, with at least 2.2 hours of care per resident per day provided by a CNA (or for 2022 only, a nurse aide) and at least 1.1 hours of care per resident per day provided by an RN or LPN
- Impose penalties of up to \$2000 per day for violations of minimum staffing standards.

The regulations will go into effect upon publication in the State Register, likely in the next two to three weeks. Note however that the underlying legislation has been in effect since April 1, 2022.

Additional guidance from the Department of Health regarding these regulations is also anticipated in the coming weeks.

The healthcare team at Abrams Fensterman are also closely monitoring litigation challenging the laws underlying these new regulations, which could significantly impact the future course of regulation in this area.

The text of the direct care spending regulation is [available here](#).

The text of the minimum staffing regulation is [available here](#).

The healthcare attorneys at Abrams Fensterman 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.](#), [Michael Bass, Esq.](#), [Richard Thomas, Esq.](#), [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.