

**Methodology to Indicate Changes to  
DPH-17-011P – Skilled Nursing Facilities 3.5 Direct Care Hours**

Changes to the proposed regulations are indicated as follows:

- Text **added** to the proposed regulation is indicated in black double underline
- Text **removed** from the proposed regulation is indicated in ~~black double strikethrough~~

**Title 22. Social Security**  
**Division 5. Licensing and Certification of Health Facilities, Home Health Agencies,**  
**Clinics, and Referral Agencies**  
**Chapter 3. Skilled Nursing Facilities**  
**Article 3. Required Services**

**Amend Section 72329.2 as follows:**

**§ 72329.2. Nursing Service – Staff.**

(a) Each facility, except those skilled nursing facilities that are a distinct part of a general acute care facility or a state-owned hospital or developmental center, shall employ sufficient nursing staff to provide a minimum of 3.5 direct care service hours per patient day, except as set forth in Health and Safety Code section 1276.9. Skilled nursing facilities shall ~~have provide~~ a minimum of 2.4 certified nurse assistant hours per patient day ~~for certified nurse assistants~~ to meet the requirements of this subdivision.

(1) Facilities that are a distinct part of a general acute care facility or a state-owned hospital or developmental center shall continue to meet the standard set forth in Health and Safety Code section 1276.5.

(2) Facilities which provide care for persons with mental health disorders and in which psychiatric technicians provide patient care shall meet the following standards:

(A) ~~If For~~ patients ~~are~~ not certified for special treatment programs, facilities shall employ sufficient staff to provide a minimum of 3.5 direct care service hours per patient day.

(B) For patients certified for special treatment programs, facilities shall employ sufficient staff to provide a minimum of 2.3 nursing hours per patient day for each patient certified to the special treatment program, exclusive of additional staff required to meet the staffing standards of the special treatment program.

(b) A facility may request a waiver to address individual patient needs in accordance with section 1276.65(c)(2) of the Health and Safety Code as long as the facility continues to meet the minimum 3.5 direct care service hour requirement.

(1) The facility shall submit a ~~written request for a waiver~~ application with substantiating information to the Department using the Department's online application and containing the following information by April 1 of each year:

(A) To request a waiver for a facility that does not have a subacute care unit approved by the Department of Health Care Services or for portions of a facility not approved as a subacute care unit by the Department of Health Care Services:

(i) The average daily census at the facility, excluding any patients in a subacute care unit approved by the Department of Health Care Services.

(ii) A copy of the facility's Minimum Data Set Facility Level Quality Measure Report and Minimum Data Set Facility Characteristics Report, dated no earlier than 30 days prior to submission of the waiver application.

(iii) The level of direct caregiver staffing the facility will provide if granted a waiver, including the number and type of staff.

(iv) An analysis of the resident needs at the facility, including a description of the assessment tools used, how the tools were applied, and the outcomes used to determine resident needs.

(B) To request a waiver for a subacute care unit approved by the Department of Health Care Services:

(i) A current, valid contract with the Department of Health Care Services to provide subacute care.

(ii) The most recent audit findings from the Department of Health Care Services related to determining compliance with the staffing requirements set forth in title 22, California Code of Regulations, division ~~53~~, section 51215.5.

~~(2) Until the Department adopts final regulations, the facility shall request the waiver by using the program flexibility procedures specified in section 72213, and the Department shall process the request as required by section 1276 of the Health and Safety Code. When evaluating waiver requests, the Department shall consider: resident quality of care at the facility and the needs and acuity level of the residents.~~

(A) The substantiating information submitted by the facility.

(B) Resident quality of care at the facility.

(C) The facility's compliance history.

(D) The needs and acuity levels of residents at the facility.

~~(23) If there is a change in the substantiating information submitted pursuant to subdivisions (b)(1)(A)(iv) or (b)(1)(B)(i) of this section, the facility shall notify the Department within 15 days of the change.~~

~~(4) A request for a waiver with substantiating information included shall be updated and resubmitted annually by April 1 of each year.~~

~~(35) The facility shall post the letter of acknowledgement from the Department confirming receipt of a waiver request, as a notice of a pending waiver application. The notice shall be posted immediately adjacent to the facility's license.~~

~~(46) A facility with an approved waiver must post the waiver immediately adjacent to the facility's license.~~

(57) Facilities shall provide written notice of approved or pending waivers to all residents prior to execution of an admission agreement. The notice shall be either a true copy of the approval letter or a letter from the Department acknowledging receipt of a waiver request.

(8) The Department may revoke approval of a patient needs waiver at any time if the facility does not comply with the terms and conditions of the waiver and the Department determines that the non-compliance poses a significant risk to the health, safety, or welfare of patients.

(c) The facility may request a waiver for the 2.4 hours per patient day for certified nurse assistants requirement or the 3.5 direct care service hours requirement in accordance with section 1276.65(l) of the Health and Safety Code as long as the facility continues to meet the 3.2 nursing hours per patient day requirement.

(1) The facility shall submit a written request for a waiver with substantiating information to the Department pursuant to the All Facility Letter issued by the Department pursuant to Health and Safety Code section 1276.65(l).

(d) Implementation of this section shall be contingent on an appropriation in the annual Budget Act and continued federal approval of the Skilled Nursing Facility Quality Assurance Fee, in accordance with Health and Safety Code section 1276.65(i).

(e) Implementation of this section shall not affect the authority of the Department to continue to implement section 14126.022 of the Welfare and Institutions Code by means of All Facility Letters.

Note: Authority cited: Sections 1275, 1276.5, 1276.65 and 131200, Health and Safety Code.  
Reference: Sections 1276, 1276.5, 1276.65, 1276.9, 131050, 131051 and 131052, Health and Safety Code; and Section 14126.022, Welfare and Institutions Code.