

NURSING HOME MINIMUM STAFFING LEVELS ENFORCEMENT MANUAL AND PROCEDURES



STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH
DIVISION OF CUSTOMER SERVICES
CENTER FOR HEALTH FACILITIES REGULATION

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¹ Supersedes *Nursing Home Minimum Staffing Levels Enforcement Manual and Procedures*, dated August 2022

PREFACE

The Center for Health Facilities Regulation (CHFR) *Nursing Home Minimum Staffing Levels Enforcement Manual and Procedures (Manual)* sets forth the general principles governing the CHFR's enforcement program for ensuring compliance with the nursing facility minimum staffing levels established pursuant to RI Gen. Laws §§ 23-17.5-32 & 23-17.5-33.

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1.0 **Introduction**

- (a) The mission of the CHFR is to license and regulate healthcare facilities in Rhode Island. The following are some of the activities the CHFR performs:
 - (1) Establishing requirements and guidance addressing the operation of healthcare facilities.
 - (2) Licensing applicants to operate licensed facilities in accordance with CHFR requirements and specific license conditions.
 - (3) Promoting the transparency and openness of the CHFR’s enforcement program for all stakeholders.
- (b) Oversight of licensed activities ensures that licensees are complying with CHFR requirements and license conditions. Enforcement is an important part of the CHFR’s oversight activities.

1.1 **Purpose.** The CHFR’s *Manual* supports its mission to implement R.I. Gen. Laws Title 23, Chapter 17.5 (Rights of Nursing Home Patients) and ensure adequate protection of licensed nursing home residents. Compliance with applicable requirements, including statutory requirements, regulations, license conditions and Orders, provides reasonable assurance to the CHFR and the public that adequate protection of licensed facility residents and staff are being maintained. The application of this *Manual* ensures that associated enforcement actions properly reflect the significance of such deficiencies. Consistent with this objective, the *Manual* endeavors to do the following:

- (a) Describe how RIDOH will evaluate staffing levels and calculate penalties in accordance with the 2021 Nursing Home Staffing and Quality Care Act [PL 2021-024].
- (b) Encourage prompt identification and prompt comprehensive correction of deficiencies regarding these requirements.

1.2 **Applicability.** The *Manual* applies to all nursing facilities licensed by CHFR pursuant to R.I. Gen. Laws Title 23, Chapter 17 (*Licensing of Healthcare Facilities*)

1.3 **Statutory Authority.** The CHFR derives its principal authority to establish minimum staffing levels for nursing facilities from R.I. Gen. Laws Title 23, Chapter 17.5 (*Rights of Nursing Home Patients*).

1.4 **Regulatory Framework.** The CHFR’s enforcement program is governed by the CHFR regulations, 216-RICR-40-10-1, *Licensing of Nursing Facilities*.

2.0 **Data Sources**

2.1 The following timelines are to be used with regard to data from the *Payroll Based Journal* (PBJ) and information submitted directly to RIDOH from nursing facilities which only have State licensure:

REPORTING PERIOD	DUE DATE	DATA TO CHFR	SODs ISSUED
July 1 – September 30	November 14	Last Wednesday in January	February 28
October 1 – December 31	February 14	Last Wednesday in April	May 31
January 1 – March 31	May 15	Last Wednesday in July	August 31
April 1 – June 30	August 14	Last Wednesday in October	November 30

2.2 The following datasets need to be downloaded to evaluate compliance with the minimum staffing levels for nursing facilities established by R.I. Gen. Laws Title 23, Chapter 17.5:

- (a) For nursing facilities certified by the U.S. Centers for Medicare & Medicaid Services (CMS), access most current *PBJ Daily Nurse Staffing* report [<https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing>]. Click on *View Data*. Click on *Filter*. Click on *Select Column* and scroll down to *STATE*. Click on *Select Condition* and click on *EQUALS*. Type *RI* in the *Enter Value* box. Click on *Apply Filters*. Click on *Export* and select *CSV for Excel* format. Click on *Export* again to download data. Dataset contains approximately 7,000 rows.

Delete all data columns except PROVNUM, PROVNAME, CITY, WorkDate, MDScensus, Hrs_RN, Hrs_LPN, Hrs_CNA, and Hrs_MedAide.

Save *PBJ Daily Nurse Staffing* Excel file.

- (b) For nursing facilities certified by CMS, access most current *PBJ Daily Non-Nurse Staffing* report from the U.S. Centers for Medicare & Medicaid Services [<https://data.cms.gov/quality-of-care/payroll-based-journal-daily-non-nurse-staffing>]. Click on *View Data*. Click on *Filter*. Click on *Select Column* and scroll down to *STATE*. Click on *Select Condition* and click on *EQUALS*. Type *RI* in the *Enter Value* box. Click on *Apply Filters*. Click on *Export* and select *CSV for Excel* format. Click on *Export* again to download data. Dataset contains approximately 7,100 rows.

Delete all data columns except PROVNUM, PROVNAME, CITY, WorkDate, MDScensus, Hrs_NP, Hrs_ClinNrsSpec, Hrs_OT, Hrs_PT, Hrs_PAsst, and Hrs_SpcLangPath.

Save *PBJ Daily Non-Nurse Staffing* Excel file.

- (c) Combine *PBJ Daily Nurse Staffing* and *PBJ Daily Non-Nurse Staffing* Excel files into a single *RI_ComplianceDataCYxxxxQx* Excel file.

- (d) For nursing facilities not certified by CMS and which only have State licensure, access the RIDOH reporting database for these facilities [<https://kidsnet.health.ri.gov/kidsnet-apex-prod-fregs>]. Login and click on *Nursing Home Staffing Supervisor* menu. Click on *Extract* from the *Nursing Home Staffing* menu. Click on *Actions* (in the search bar) and select *Filter*. Under *Column* select *Cy Qtr*. Under *Operator* select *=*. Under *Expression* enter current calendar quarter in format *YYYYQN*. Click *Apply*. Click on *Actions* (in the search bar) and select *Download*. Choose *CSV* as download format. The download should contain approximately 450 records. Save *State Licensure Only Staffing* Excel file.

- (e) Combine *State Licensure Only Staffing* Excel file into the *RI_ComplianceDataCYxxxxQx* Excel file.

- (f) Access most current *Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates - Providence-Warwick, RI-MA* from the US Bureau of Labor Statistics [https://www.bls.gov/oes/current/oes_77200.htm]. Extract *median hourly wage* data for Occupational Therapists [Occupation Code 29-1122], Physical Therapists [Occupation Code 29-1123], Speech-Language Pathologists [Occupation Code 29-1127], Registered Nurses [Occupation Code 29-1141], Nurse Practitioners [Occupation Code 29-1171], Licensed Practical Nurses [Occupation Code 29-2061], Nursing Assistants [Occupation Code 31-1131] and Physical Therapist Assistants [Occupation Code 31-2021].

- (g) Access most current *Employer Costs for Employee Compensation* from the US Bureau of Labor Statistics [<https://www.bls.gov/news.release/eccc.t02.htm>]. Extract *Total Benefits (%)* from Table 2 for *Health Care and Social Assistance*.

2.3 Calculate All Staff hours (ASH) for each day at each facility as follows:
 $ASH = (Hrs_RN + Hrs_NP + Hrs_ClinNrsSpec + Hrs_LPN + Hrs_CNA + Hrs_MedAide + Hrs_OT + Hrs_PT + Hrs_PTasst + Hrs_SpcLangPath)$.

2.4 Calculate benefits and total hourly compensation for Occupational Therapists [Occupation Code 29-1122], Physical Therapists [Occupation Code 29-1123], Speech-Language Pathologists [Occupation Code 29-1127], Registered Nurses [Occupation Code 29-1141], Nurse Practitioners [Occupation Code 29-1171], Licensed Practical Nurses [Occupation Code 29-2061], Nursing Assistants [Occupation Code 31-1131] and Physical Therapist Assistants [Occupation Code 31-2021]. Use calculated total hourly compensation for Nursing Assistants to calculate total hourly compensation for Medication Aides. Use calculated total hourly compensation for Registered Nurses to calculate total hourly compensation for Clinical Nurse Specialists. Total hourly compensation for each position is calculated as follows:

(a) $Total\ hourly\ compensation_{position} = median\ hourly\ wage_{position} / (1 - Total\ Benefits\ \%)$

3.0 **Compliance Determination**

3.1 Calculate the quarterly average CNA hours ($Q_{Avg-CNA}$) per patient at each facility as follows:

(a) $Q_{Avg-CNA} = (Total\ daily\ Avg\ CNA\ hours\ reported\ for\ quarter) / (days\ in\ quarter)$

(b) Effective 1 January 2023:

(1) If $Q_{Avg-CNA} \geq 2.6$, facility is in compliance.

(2) If $Q_{Avg-CNA} < 2.6$, facility is out of compliance.

(c) For the time period 1 April through 31 December 2022:

(1) If $Q_{Avg-CNA} \geq 2.44$, facility is in compliance.

(2) If $Q_{Avg-CNA} < 2.44$, facility is out of compliance.

3.2 Calculate the quarterly average All Staff hours ($Q_{Avg-All\ Staff}$) per patient at each facility as follows:

(a) $Q_{Avg-All\ Staff} = (Total\ daily\ Avg\ All\ Staff\ hours\ reported\ for\ quarter) / (days\ in\ quarter)$

(b) Effective 1 January 2023:

(1) If $Q_{Avg-All\ Staff} \geq 3.81$, facility is in compliance.

(2) If $Q_{Avg-All\ Staff} < 3.81$, facility is out of compliance.

(c) For the time period 1 April through 31 December 2022:

(1) If $Q_{Avg-All\ Staff} \geq 3.58$, facility is in compliance.

(2) If $Q_{Avg-All\ Staff} < 3.58$, facility is out of compliance.

3.3 When determining compliance, $Q_{Avg-CNA}$ and $Q_{Avg-All\ Staff}$ are rounded to two decimal points.

4.0 **Penalty Assessment**

4.1 For each quarter that the $Q_{Avg-CNA}$ is out of compliance, calculate average CNA hours per patient for each day at each facility as follows:

(a) For nursing facilities certified by CMS: $Avg_{CNA} = (Hrs_CNA / MDS_{census})$

(b) For nursing facilities which only have State licensure: $Avg_{CNA} = (Hrs_CNA / Census)$

(c) Effective 1 January 2023:

- (1) If $\text{Avg}_{\text{CNA}} \geq 2.6$, facility is in compliance.
 - (2) If $\text{Avg}_{\text{CNA}} < 2.6$, facility is out of compliance.
- (d) For the time period 1 January through 31 December 2022:
- (1) If $\text{Avg}_{\text{CNA}} \geq 2.44$, facility is in compliance.
 - (2) If $\text{Avg}_{\text{CNA}} < 2.44$, facility is out of compliance.
- 4.2 For each day that a facility is out of compliance with Avg_{CNA} staffing levels, calculate the additional CNA hours (ACNAH) that were needed for that day as follows:
- (a) Effective 1 January 2023:
- (1) For nursing facilities certified by CMS: $\text{ACNAH} = (2.6 * \text{MDS}_{\text{census}}) - \text{Hrs}_{\text{CNA}}$
 - (2) For nursing facilities which only have State licensure: $\text{ACNAH} = (2.6 * \text{Census}) - \text{Hrs}_{\text{CNA}}$
- (b) For the time period 1 January through 31 December 2022:
- (1) For nursing facilities certified by CMS: $\text{ACNAH} = (2.44 * \text{MDS}_{\text{census}}) - \text{Hrs}_{\text{CNA}}$
 - (2) For nursing facilities which only have State licensure: $\text{ACNAH} = (2.44 * \text{Census}) - \text{Hrs}_{\text{CNA}}$
- 4.3 For each day that a facility is out of compliance with Avg_{CNA} staffing levels, calculate the cost of the additional CNA hours that were needed for that day as follows:
Cost $\text{ACNAH} = \text{ACNAH} * \text{CNA total hourly compensation}$
- 4.4 For each quarter that the $Q_{\text{Avg-All Staff}}$ is out of compliance, calculate average staff hours per patient for each day at each facility as follows:
- (a) For nursing facilities certified by CMS: $\text{Avg}_{\text{All Staff}} = (\text{ASH} / \text{MDS}_{\text{census}})$
- (b) For nursing facilities which only have State licensure: $\text{Avg}_{\text{All Staff}} = (\text{ASH} / \text{Census})$
- (c) Effective 1 January 2023:
- (1) If $\text{Avg}_{\text{All Staff}} \geq 3.81$, facility is in compliance.
 - (2) If $\text{Avg}_{\text{All Staff}} < 3.81$, facility is out of compliance.
- (d) For the time period 1 January through 31 December 2022:
- (1) If $\text{Avg}_{\text{All Staff}} \geq 3.58$, facility is in compliance.
 - (2) If $\text{Avg}_{\text{All Staff}} < 3.58$, facility is out of compliance.
- 4.5 For each day that a facility is out of compliance with $\text{Avg}_{\text{All Staff}}$ levels, calculate the additional All Staff hours (AASH) that were needed for that day as follows:
- (a) Effective 1 January 2023:
- (1) For nursing facilities certified by CMS: $\text{AASH} = (3.81 * \text{MDS}_{\text{census}}) - \text{ASH} - \text{ACNAH}$
 - (2) For nursing facilities which only have State licensure: $\text{AASH} = (3.81 * \text{Census}) - \text{TSH} - \text{ACNAH}$
- (b) For the time period 1 January through 31 December 2022:
- (1) For nursing facilities certified by CMS: $\text{AASH} = (3.58 * \text{MDS}_{\text{census}}) - \text{ASH} - \text{ACNAH}$
 - (2) For nursing facilities which only have State licensure: $\text{AASH} = (3.58 * \text{Census}) - \text{ASH} - \text{ACNAH}$

- 4.6 For each day that a facility is out of compliance with $Avg_{All\ Staff}$ levels:
- Calculate the fraction (f_n) of All staff hours (ASH) provided by each of the following staff categories: Occupational Therapists, Physical Therapists, Speech-Language Pathologists, Registered Nurses, Nurse Practitioners, Clinical Nurse Specialists, Licensed Practical Nurses, Nursing Assistants, Physical Therapist Assistants and Medication Aides.
 - Calculate the cost of the additional All Staff hours that were needed for that day as follows: $Cost\ AASH = AASH * ((f_{CNA} * p_{CNA}) + (f_{OT} * p_{OT}) + (f_{PT} * p_{PT}) + (f_{SLP} * p_{SLP}) + (f_{RN} * p_{RN}) + (f_{NP} * p_{NP}) + (f_{CNS} * p_{CNS}) + (f_{LPN} * p_{LPN}) + (f_{PTA} * p_{PTA}) + (f_{MA} * p_{MA}))$
 Where: f_n = fraction of TSH provided by that staff category on that day
 p_n = total hourly compensation for that staff category
- 4.7 Total Cost ACNAH and Cost AASH for each facility on each day that it is in noncompliance with the minimum staffing requirements and apply penalty factor as follows:
 Daily Penalty = (Cost ACNAH + Cost AASH) * P
 Where: P = 2 for 1st quarter that facility is in noncompliance
 P = 2.5 for 2nd quarter that facility is in noncompliance
 P = 3 for 3rd and subsequent quarters that facility is in noncompliance
- 4.8 Pursuant to R.I. Gen. Laws § 23-17.5-33(b)(2), if a facility does not submit payroll based data (PBJ) to CMS for an entire calendar quarter, the facility will be assessed an aggregate penalty (i.e., daily calculations will not be shown) based on the total Daily Penalty assessed for the last quarter for which PBJ data was submitted times the appropriate penalty factor for the missing calendar quarter.
- 4.9 Pursuant to R.I. Gen. Laws § 23-17.5-34(k), if a facility fails to comply with the submission of payroll based data (PBJ) for All Staff positions to CMS for any day during a calendar quarter, the facility will be assessed an aggregate penalty (i.e., daily calculations will not be shown) of \$1,000/day for the missing All Staff hours.
- 4.10 A facility that is in noncompliance for three consecutive quarters shall be referred to EOHHS for action pursuant to R.I. Gen. Laws § 23-17.5-33(b)(7).

5.0 PENALTY DISCRETION

- 5.1 Pursuant to R.I. Gen. Laws § 23-17.5-33(c)(2), CHFR may exercise discretion to determine the gravity of the staffing violation in situations where there is no more than a ten percent (10%) deviation from Avg_{CNA} and/or $Avg_{All\ Staff}$ minimum staffing requirements and may make appropriate adjustments to the penalty. Any such discretion shall be implemented on a case-by-case basis and only when requested by the facility and supported by appropriate documentation.
- 5.2 Further, pursuant to R.I. Gen. Laws § 23-17.5-33(b)(2), CHFR may exercise discretion to waive penalties when unforeseen circumstances have occurred that resulted in call-offs of scheduled staff. This provision may be applied by CHFR no more than two (2) times per calendar year per facility. This provision shall be implemented on a case-by-case basis and only when requested by the facility and supported by appropriate documentation.
- 5.3 A facility may request an administrative hearing before a hearing officer regarding the proposed imposition of any penalty in accordance with R.I. Gen. Laws § 42-35 and 216-RICR-10-05-04.

Appendix A: Data File Specifications for Noncertified Nursing Facilities

Column Name	Description	Specification Notes
PROVLIC	Facility License Number (LTCxxxxx)	character (8) [LTCxxxxx]
PROVNAME	Facility Name (as it appears on license)	character (50)
CITY	City/Town where facility is physically located	character (20)
CY_Qtr	Calendar Quarter (yyyyQq, e.g. 2022Q1)	character (6) [yyyyQq]
WorkDate	Day for Reported Hours (yyyymmdd)	character (8) [yyyymmdd]
Census	Resident Census as of 1201 A.M. for that day	integer (3) [nnn]
Hrs_RN	Total Hours of direct nursing care provided by Registered Nurses on WorkDate	numeric (5) [nnn.nn]
Hrs_NP	Total Hours of direct nursing care provided by Nurse Practitioners on WorkDate	numeric (5) [nnn.nn]
Hrs_ClinNrsSpec	Total Hours of direct nursing care provided by Clinical Nurse Specialists on WorkDate	numeric (5) [nnn.nn]
Hrs_LPN	Total Hours of direct nursing care provided by Licensed Practical Nurses on WorkDate	numeric (5) [nnn.nn]
Hrs_CNA	Total Hours of direct nursing care provided by Nursing Assistants on WorkDate	numeric (5) [nnn.nn]
Hrs_MedAide	Total Hours of direct nursing care provided by Medication Aides on WorkDate	numeric (5) [nnn.nn]
Hrs_OT	Total Hours of direct nursing care provided by Occupational Therapists on WorkDate	numeric (5) [nnn.nn]
Hrs_PT	Total Hours of direct nursing care provided by Physical Therapists on WorkDate	numeric (5) [nnn.nn]
Hrs_PTasst	Total Hours of direct nursing care provided by Physical Therapy Assistants on WorkDate	numeric (5) [nnn.nn]
Hrs_SpcLangPath	Total Hours of direct nursing care provided by Speech-Language Pathologists on WorkDate	numeric (5) [nnn.nn]

The file can be either comma delimited, or pipe delimited. It cannot be an xlsx file but should be a.csv file.

The naming convention for the file should be in the same each time it is submitted (i.e. FacilityName_date.csv).

Appendix B: Position Descriptions

Position Title	Position Description
Registered Nurse (RN)	An individual licensed to practice as a registered nurse in Rhode Island. Includes geriatric nurse practitioners and clinical nurse specialists who primarily perform nursing, not physician-delegated tasks.
Nurse Practitioner (NP)	A registered nurse with specialized graduate education who is licensed in Rhode Island to diagnose and treat illness, independently or as part of a healthcare team.
Clinical Nurse Specialist	A registered nurse with specialized graduate education who provides advanced nursing care.
Licensed Practical Nurse (LPN)	An individual licensed to practice as a licensed practical nurse in Rhode Island.
Certified Nurse Aide (CNA)	An individual licensed to practice as a nursing assistant in Rhode Island who is providing nursing or nursing-related services to residents. Do not include volunteers.
Medication Aide (MA)	An individual licensed to practice as a medication aid in Rhode Island
Occupational Therapist (OT)	An individual licensed as an occupational therapist in Rhode Island. Include OTs who spend less than 50% of their time as activities therapists.
Physical Therapist (PT)	An individual licensed as a physical therapist in Rhode Island.
Physical Therapy Assistant (PTA)	An individual who is licensed as a physical therapist assistant in Rhode Island and is authorized to assist a licensed Physical Therapist (PT) to carry out the PT's comprehensive plan of care, without the direct supervision of the PT.
Speech-Language Pathologist	An individual who is licensed as a speech language pathologist in Rhode Island to provide speech therapy and related services (e.g., teaching a resident to swallow).