

ILLINOIS REGISTER

DEPARTMENT OF PUBLIC HEALTH

DRAFT NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended

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at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010; amended at 35 Ill. Reg. 3378, effective February 14, 2011; amended at 36 Ill. Reg. _____, effective _____.

SUBPART F: NURSING AND PERSONAL CARE

Section 300.1230 Direct Care Staffing

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- a) ~~Direct care staffing~~ Staffing shall be based on the needs of the residents, and shall be determined by figuring the number of hours of direct care ~~nursing~~ time each resident needs on each shift of the day. This determination shall be made separately for both licensed and non-licensed direct care ~~nonlicensed nursing~~ personnel. ~~(A, B)~~
- b) In a facility whose residents participate in regularly scheduled therapeutic programs outside the facility, such as school or sheltered workshops, the minimum hours per day of direct care ~~nursing care~~ are reduced proportionately. ~~Exceptions to the shift distribution will be allowed if more than 50% of the residents are regularly scheduled to be out of the facility, but the total required hours must be provided daily. For example: an ICF resident requires 1.75 hours of care per day, but attends a workshop for six hours, five days a week. The resident's required minimum hours of care is reduced by 25% in calculating staffing hours required on week days.~~
- c) Each facility shall ~~It is the responsibility of each facility to~~ determine the direct care staffing needed to meet the needs of its residents.
- d) In determining the level of care a resident needs, the patient evaluation system in the Medical Review-Utilization Review program may be used. The facility may use other methods of determining the level of care for skilled and intermediate level residents, but shall ~~must~~ make the method of determination used available to the Department. Residents whose care is reimbursed by the State shall be at the level determined by the Medical Review-Utilization Review patient evaluation system. Miraculously
- e) ~~The designations used for shifts in the following tables are used for illustrative purposes only, and are not meant to imply that other shift designations cannot be used by the facility.~~
- e)f) The direct care ratios in this Section ~~following figures~~ apply to numbers of persons actually on duty and not to numbers of persons scheduled to be on duty.
- f)g) For the purpose of computing staff to resident ratios, direct care staff shall include: ~~The director of nursing's time shall not be included in staffing ratios.~~
- 1) registered nurses;
 - 2) licensed practical nurses;
 - 3) certified nurse assistants;

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- 4) psychiatric services rehabilitation aides;
 - 5) rehabilitation and therapy aides;
 - 6) psychiatric services rehabilitation coordinators;
 - 7) assistant directors of nursing;
 - 8) 50% of the Director of Nurses' time;
 - 9) 30% of the Social Services Directors' time (Section 3-202.05 of the Act);
and
 - 10) licensed physical, occupational, speech and respiratory therapists.
- g) Facilities subject to Subpart S and Subpart T may utilize specialized clinical staff, as defined in those Subparts, to count towards the staffing ratios. (Section 3-202.05(a) of the Act)
- h) Level of Care Determinations
- 1) When differences of The following figures are also considered to be minimum requirements, and each facility, except those of 250 or more occupied beds, shall provide at least the amount of staffing indicated. However, it is recognized that there may be occasional differences of opinion occur between facility staff and Department surveyors regarding the level of care an individual resident may require. When such differences occur, the surveyor shall determine whether or not the resident is receiving appropriate care. If the resident is receiving appropriate care, the surveyor will shall accept the facility's level of care determination in determining the number of direct care nursing hours to be provided by the facility shall provide.
 - 2) Facilities of more than 250 occupied beds shall must meet the staff-resident ratio for the 250 residents needing the highest level of care. Additional direct care staff shall be provided to meet resident needs as determined by the facility and verified by the Department. The Department may, based upon the Department's Patient Care Evaluation System review of resident care, require the facility to provide additional direct care nursing hours to meet resident needs.

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- i) ~~In computing the number of persons needed in the following examples, any figure less than .25 will be dropped from the computation and any figure of .75 or higher will go to the next higher number. Figures in between .25 and .75 will require at least the amount of coverage indicated: for example, .25 will require two hours of coverage; .3 will require two hours of coverage; .5 will require four hours of coverage; .6 will require five hours of coverage; .74 will require six hours of coverage; .75 or higher will require eight hours of coverage.~~
- j) ~~These additional hours may be provided by: a part time person working those hours only on that shift each day; a full time person working a shift that spans two regular shifts, for example, from noon to 8 P.M.; or by an additional full time person on the shift. However, these figures are minimal staffing requirements, and it is recommended that a full time person be provided.~~
- i)k) ~~The facility shall schedule nursing personnel so in such a manner that the nursing needs of all residents are met. At least 40% of the minimum required hours shall be on the day shift, at least 25% of the minimum required hours shall be on the evening shift, and at least 15% of the minimum required hours shall be on the night shift.~~
- j)l) ~~Skilled Nursing Care
Residents needing skilled nursing care may only be cared for in facilities licensed as Skilled Nursing Facilities. Each resident needing skilled care shall be provided at least 2.5 hours of nursing/personal care each day, of which 20% must be licensed nurse time. (A, B)~~
- 1) Effective July 1, 2010, for each resident needing skilled care, a minimum staffing ratio of 2.5 hours of nursing and personal care each day must be provided; for each resident needing intermediate care, 1.7 hours of nursing and personal care each day must be provided.
- 2) Effective January 1, 2011, the minimum staffing ratios shall be increased to 2.7 hours of nursing and personal care each day for a resident needing skilled care and 1.9 hours of nursing and personal care each day for a resident needing intermediate care.
- 3) Effective January 1, 2012, the minimum staffing ratios shall be increased to 3.0 hours of nursing and personal care each day for a resident needing skilled care and 2.1 hours of nursing and personal care each day for a resident needing intermediate care.

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- 4) Effective January 1, 2013, the minimum staffing ratios shall be increased to 3.4 hours of nursing and personal care each day for a resident needing skilled care and 2.3 hours of nursing and personal care each day for a resident needing intermediate care.
 - 5) Effective January 1, 2014, the minimum staffing ratios shall be increased to 3.8 hours of nursing and personal care each day for a resident needing skilled care and 2.5 hours of nursing and personal care each day for a resident needing intermediate care. (Section 3-202.05(d) of the Act)
- ~~k)m)~~ In the ratios noted in subsection (j), 20% of the time shall be registered nurse time.
Intermediate Nursing Care—General
Residents needing intermediate care may be cared for in facilities licensed as either Skilled Nursing Facility or Intermediate Care Facility. Each resident needing intermediate care shall be provided at least 1.7 hours of nursing/personal care each day, of which at least 20% must be licensed nurse time. (A, B)
- 1) Upon written request by a facility, the Department may grant a one-time, 90-day waiver from the requirements of subsection (k), provided that that facility has made a documented effort to recruit and hire a registered nurse without success. If the waiver is granted, the facility shall continue its efforts to recruit and hire a registered nurse while the waiver is in effect.
 - 2) In determining whether to grant the waiver set forth in subsection (k)(1), above, the Department will consider whether the facility has demonstrated to the Department that it has been unable, despite diligent efforts including, but not limited to, placing ads in newspapers and on internet job boards, attending job fairs at nursing schools, and offering wages at prevailing rate for long-term care facilities in comparable communities, to recruit and hire appropriate personnel.
 - 3) Before granting a waiver, the Department will determine that a waiver will not endanger the health or safety of residents in the facility. The Department also will maintain a list, on its website, of facilities that have been granted a one-time, 90-day waiver.
 - 4) Facilities in counties that have a population of 3 million or more are not eligible to apply for a waiver from the requirements of subsection (k).

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- l) ~~n)~~ Beginning January 1, 2011, and thereafter, light intermediate care shall be staffed at the same staffing ratio as intermediate care. (Section 3-202.05(b) of the Act)
~~Intermediate Nursing Care—Light~~
~~A Long-term care resident needing light intermediate care is one who needs personal care as defined in Section 1-120 of the Act; is mobile; requires some nursing services; needs a program of social services and activities directed toward independence in daily living skills; and needs daily monitoring. Each resident needing light intermediate care shall be provided with at least one hour of nursing/personal care each day, of which at least 20% must be licensed nurse time. (A, B)~~
- m) ~~o)~~ To determine the numbers of direct care ~~nursing~~ personnel needed to staff any facility, the following procedures shall be used:
- 1) The facility shall determine the number of residents needing skilled, ~~general, or~~ intermediate, and ~~light intermediate or sheltered~~ care.
 - 2) The number of residents in each category ~~of the three categories~~ shall be multiplied by the overall hours of coverage needed each day for each category.
 - 3) Adding the hours of care needed for the residents in each category ~~of the three categories~~ will give the total hours of care needed by all residents in the facility.
 - 4) ~~Multiplying the total hours needed each day by the percentages assigned to each shift will give the total minimum hours of care that must be provided on that shift. (Remember that the percentages assigned to each shift must total 100% each day.)~~
 - 4) ~~5)~~ Multiplying the total minimum hours of care needed ~~on each shift~~ by 20% will give the minimum amount of registered ~~licensed~~ nurse time that shall ~~must~~ be provided during a 24-hour period.
 - 5) ~~6)~~ The remaining 80% of the minimum required direct care ~~nursing~~ hours may ~~of care can~~ be fulfilled by either nursing assistants, ~~or~~ licensed nursing personnel or other staff identified in Section 300.1230(f) as long as it can be documented that they provide restorative/rehabilitative nursing measures, general nursing care, and personal care as defined in Section 300.1210.

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7) ~~The amount of time determined in subsection (5) and (6) is expressed in hours. Dividing the total number of hours needed by the number of hours each person works per shift (usually seven and one half or eight hours will give the number of persons needed to staff each shift.~~

p) ~~Example of Staffing Calculations~~

1) ~~Following is an example of this computation assuming a 100 bed Skilled Nursing Facility which has 25 skilled, 50 general intermediate and 25 light intermediate residents, assigning 45% to day shift; 35% to evening shift and 20% to the night shift.~~

2) ~~Staffing would be computed as follows:~~

A) ~~Total Minimum Hours of Care Needed~~

| Level of Care | # of Residents | Total Hrs. Needed/Day Per Resident | Total Hrs. Needed/Day Per Facility |
|--------------------|----------------|------------------------------------|------------------------------------|
| Skilled | 25 [times] | 2.5 = | 62.5 |
| General ICF | 50 [times] | 1.7 = | 85.0 |
| Light ICF | 25 [times] | 1.0 = | 25.0 |
| Total hours needed | | | 172.5 |

B) ~~Minimum Total Hours Needed Per Shift~~

| Shift | Total Hrs. Per Day | Minimum Percent Needed | Total Hrs. Needed |
|-------|--------------------|------------------------|-------------------|
| 7-3 | 172.5 [times] | 45% | 77.6 |
| 3-11 | 172.5 [times] | 35% | 60.4 |
| 11-7 | 172.5 [times] | 20% | 34.5 |
| 100% | | | 172.5 |

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C) ~~Licensed Nurse Coverage~~

| Shift | Minimum Hrs. Per Shift | | Minimum Percent Required | Minimum Nurse Hours |
|-------|------------------------------|---------|-----------------------------|---------------------------|
| 7-3 | 77.6 | [times] | 20% | 15.5 |
| 3-11 | 60.4 | [times] | 20% | 12.1 |
| 11-7 | 34.5 | [times] | 20% | 6.9 |

D) ~~Licensed Nurses Required~~

| Shift | Minimum Nurse Hrs. Required | | Hrs. Worked Per Shift | # of Nurses Needed |
|-------|--------------------------------------|--------------|--------------------------------|--------------------------|
| 7-3 | 15.5 | [divided by] | 8 = | 1.93 (2) |
| 3-11 | 12.1 | [divided by] | 8 = | 1.51 (1.5) |
| 11-7 | 6.9 | [divided by] | 8 = | 0.86 (1) |

E) ~~Nurse Aide/Orderly Coverage~~

| Shift | Minimum Nurse Hrs. Required | | Hrs. Worked Per Shift | # of Nurses Needed |
|-------|--------------------------------------|---------|--------------------------------|--------------------------|
| 7-3 | 77.6 | [minus] | 15.6 = | 62.1 |
| 3-11 | 60.4 | [minus] | 12.1 = | 48.3 |
| 11-7 | 34.5 | [minus] | 6.9 = | 27.6 |

F) ~~Nurse Aides/Orderlies Required~~

| Shift | Minimum Aide Hrs. Required | | Hrs. Worked Per Shift | # of Aides Needed |
|-------|-------------------------------------|--------------|--------------------------------|-------------------------|
| 7-3 | 62.1 | [divided by] | 8 = | 7.76 (8) |

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| | | | | | |
|-----------------|------|--------------|---|---|------------|
| 3-11 | 48.3 | {divided by} | 8 | = | 6.03 (6) |
| 11-7 | 27.6 | {divided by} | 8 | = | 3.45 (3.5) |

(Source: Amended at 36 Ill. Reg. _____, effective _____)