



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
*Aging and Long-Term Support Administration*  
*PO Box 45600, Olympia, Washington 98504-5600*

June 5, 2023

**ALTA: NH #2023-024**  
**WAC 388-97-1081, MINIMUM STAFFING STANDARDS 3.4 DIRECT CARE HOURS**  
**EMERGENCY RULE IMPLEMENTATION PLAN**

Dear Nursing Facility/Home Administrator:

On March 3, 2023, the Department of Social and Health Services (the department) filed emergency rules under [WSR 23-05-041](#) to establish reimplement requirements for the 3.4 direct care hours per resident day (HRD), and to waive the 24 hours per day, seven days per week (24/7) registered nurse (RN), and 16 hours per day, seven days per week (16/7) RN or licensed practical nurse (LPN) requirements under RCW 74.42.360. Please refer to [ALTA NH #2023-006](#) for an overview of the emergency rules and additional information.

Under the emergency rule [WAC 388-97-1081](#), enforcement of the 3.4 HRD requirements under WAC 388-97-1090 is suspended until October 27, 2023, to allow nursing homes (NH) to gradually return to full compliance. To monitor facility progress, the department will use data from the Payroll Based Journal (PBJ) report to determine each facility's ability to meet the 3.4 HRD. The quarterly PBJ report that includes data from October 27, 2022, through December 31, 2022, will be published May 24, 2023. After that time, the department will take the following actions to implement WAC 388-97-1081:

**From May 24, 2023, to August 2023:**

- The department will:
  - Calculate the 3.4 HRD from the PBJ reports from October 27, 2022, through December 31, 2022;
  - Calculate the fines associated with non-compliance with the 3.4 HRD; and
  - Notify each non-compliant NH of what the fines would be and when the NH is identified as having less than the 3.4 HRD state requirement.
  
- The Long-Term Care Quality Improvement Program (QIP) Specialist will:
  - Notify by phone each NH Director of Nursing Services (DNS) or Administrator who received a notice of non-compliance;
  - Provide targeted support by completing the Nursing Home Targeted Support Form with the NH; and
  - Send the Nursing Home Targeted Support Form to the Residential Care Services (RCS) Policy Unit and a copy to the appropriate RCS Field Manager and Regional Administrator.
  
- The Complaint Investigator or Surveyor will:
  - Not cite the facility for not meeting the 3.4 HRD state requirement;
  - Write a citation when the department determines the facility did not complete the PBJ report per federal requirement (**F851**).

ALTSA Provider Letter: **WAC 388-97-1081, MINIMUM STAFFING STANDARDS 3.4 DIRECT CARE HOURS EMERGENCY RULE IMPLEMENTATION PLAN**

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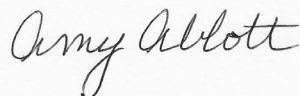
**From August 2023 to October 27, 2023:**

- The Centers for Medicare and Medicaid Services (CMS) will release the quarterly PBJ report including data from January 1, 2023, through March 31, 2023.
- The 3.4 HRD state requirement will still be waived (no related enforcement or fines issued).
- RCS Complaint Investigators or Surveyors will provide targeted support to the NHs, discontinuing the use of the QIPs.
- Nursing Homes may receive their *first* notice of non-compliance (if not received within the May 24, 2023, time frame), **or** *second* notice of non-compliance.
  
- **For the first notice**, Compliant Investigators or Surveyors will:
  - Notify by phone each NH DNS or Administrator who received a notice of non-compliance;
  - Provide targeted support by completing the Nursing Home Targeted Support Form with the NH;
  - Send the Nursing Home Targeted Support Form to the Residential Care Services (RCS) Policy Unit and a copy to the appropriate RCS Field Manager and Regional Administrator;
  - Not cite the facility for not meeting the 3.4 HRD state requirement; and
  - Issue a citation when the department determines the facility did not complete the PBJ report per federal requirement (**F851**).
  
- **For the second notice**, Complaint Investigators or Surveyors will:
  - Conduct an onsite visit to gather information about any concerns related to care and services for not meeting the 3.4 HRD state requirement. (This visit could be part of survey or independent visit);
  - Provide targeted support by completing the Nursing Home Targeted Support Form with the NH;
  - Not cite the facility for not meeting the 3.4 HRD state requirement;
  - Issue a citation when the department determines the facility did not complete the PBJ report per federal requirement (**F851**); and
  - Make a referral to the Complaint Resolution Unit about care and service concerns related to the NH providing fewer than 3.4 HRD.

Please note that the 3.4 HRD, 24/7 RN, and 16/7 RN or LPN requirements are the only state requirements that are being waived until October 27, 2023. The NH is still required to meet all federal regulations, including all federal staffing requirements.

Thank you for your continued commitment to resident health and safety. If you have any questions, please contact your local RCS Field Manager or Molly McClintock, Nursing Home Policy Program Manager, at (360) 742-6966 or [molly.mcclintock@dshs.wa.gov](mailto:molly.mcclintock@dshs.wa.gov).

Sincerely,



Amy Abbott, Director  
Residential Care Services

DSHS: "Transforming Lives"