

520 MINIMUM DIRECT-CARE STAFFING REQUIREMENTS

520.1 Definitions

For purposes of this regulation, and unless otherwise specified herein, the following definitions shall apply. The following definitions are independent of, and in no way are intended to modify, amend or otherwise change, the definitions set forth in the Reimbursement Methodology.

- 520.1.1** *Direct-care staff* means any licensed or certified nursing staff who provides direct, hands-on care to residents in a nursing facility. *Direct-care Staff* shall not include therapy personnel or individuals acting as Director of Nursing for a facility.
- 520.1.2** *Midnight census* means the number of residents occupying nursing home beds in a nursing facility at midnight of each day.
- 520.1.3** *Day shift* means the period of 7:00 a.m. to 3:00 p.m., or, in the event of flex staffing, the first shift to begin after midnight.
- 520.1.4** *Evening shift* means the period of 3:00 p.m. to 11:00 p.m., or, in the event of flex staffing, the second shift to begin after midnight.
- 520.1.5** *Night shift* means the period of 11:00 p.m. to 7:00 a.m., or, in the event of flex staffing, the third shift to begin after midnight.
- 520.1.6** *Therapy personnel* shall include certified or licensed Medicare Part A Therapy personnel when they are performing, or billing for, Medicare Part A therapy services.
- 520.1.7** *Flex staffing* means the ability to vary the beginning and ending hours of a shift from the times set forth in **520.1.3** through **520.1.5**.
- 520.1.8** *Pattern of failure* means a facility did not meet the minimum staffing requirements for more than twenty percent (20%) of the total number of shifts for any one month.
- 520.1.9** *Resident census* means the midnight census as defined in 520.1.2 taken prior to the shift in question.

520.2 RATIO OF DIRECT-CARE STAFF TO RESIDENTS – COMPUTATION

- 520.2.1** Minimum staffing computations shall be performed using the following method:

Step 1 – Determine the midnight census for the date the shift begins.

Step 2 – Divide the census by the ratio of direct-care staff required for the shift being computed. The result will be the ***total number of direct-care staff required for the shift.***

Step 3 – Divide the census by the required ratio of licensed personnel for the shift being computed. The result will be the ***total number of licensed direct-care staff required for the shift.***

Step 4 – Subtract the results of Step 3 from the results of Step 2. The result will be the ***total number of remaining direct-care staff required for the shift.***

520.2.2 All computations shall be carried to the hundredth place. If the computations result in other than a whole number of direct-care staff for a shift, the number shall be rounded up to the next whole number when the computation, carried to the hundredth place, is fifty-one hundredths (.51) or higher.

520.2.3 Facilities shall have no less than one (1) licensed personnel per shift for direct-care staff as of July 1, 2001.

520.3 MINIMUM DIRECT-CARE STAFF RATIOS

520.3.1 Beginning December 1, 2002, facilities shall maintain the following direct-care staff to resident ratios:

520.3.1.1 Day Shift: One (1) direct-care staff to every seven (7) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.

520.3.1.2 Evening Shift: One (1) direct-care staff to every nine (9) residents; of which there shall be one (1) licensed nurse to every forty (40) residents.

520.3.1.3 Night Shift: One (1) direct-care staff to every fourteen (14) residents; of which there shall be one (1) licensed nurse to every eighty (80) residents.

Beginning December 1, 2002

Example The facility has a census of eighty-two (82) residents as of midnight on December 10, 2002, and is computing the required direct-care staff for the day shift of December 11, 2002. The day shift has a direct-care-staff to resident ratio of one (1) direct-care staff to every seven (7) residents, of which there shall be one (1) licensed staff member to every forty (40) residents.

Step 1: Census of 82

Step 2: $82 \div 7 = 11.71$ [**Round to 12; total number of direct-care staff require**]

Step 3: $82 \div 40 = 2.05$ [**Round to 2; number of licensed direct-care staff required**]

Step 4: $12 - 2 = 10$ [**Number of remaining direct-care staff required**]

Total number of direct-care staff for the day shift: 12

Total number of licensed direct-care staff for the day shift: 2
Total number of remaining direct care staff for the day shift: 10

Example The facility has a census of ninety-seven (97) residents as of midnight on January 3, 2003, and is computing the required direct-care staff for the evening shift. The evening shift has a direct-care-staff to resident ratio of one (1) direct-care staff to every nine (9) residents, of which there shall be one (1) licensed staff member to every forty (40) residents.

Step 1 – Census of 97

Step 2 – $97 \div 9 = 10.77$ [**Round to 11; total number of direct-care staff required**]

Step 3 – $97 \div 40 = 2.42$ [**Round to 2; number of licensed direct-care staff required**]

Step 4 – $11 - 2 = 9$ [**Number of remaining direct-care staff required**]

Total number of direct-care staff for the evening shift: 11
Total number of licensed direct-care staff for the evening shift: 2
Total number of remaining direct care staff for the evening shift: 9

Example The facility has a census of one hundred forty-two (142) residents as of midnight on December 7, 2002, and is computing the required direct-care staff for the night shift. The night shift has a direct-care-staff to resident ratio of one (1) direct-care staff to every fourteen (14) residents, of which there shall be one (1) licensed staff member to every eighty (80) residents.

Step 1 – Census of 142

Step 2 – $142 \div 14 = 10.14$ [**Round to 10; total number of direct-care staff**]

Step 3 – $142 \div 80 = 1.77$ [**Round to 2; number of licensed direct-care staff**]

Step 4 – $10 - 2 = 8$ [**Number of remaining direct-care staff**]

Total number of direct-care staff for the night shift: 10
Total number of licensed direct-care staff for the night shift: 2
Total number of remaining direct care staff for the night shift: 8

520.4 EXCEPTIONS TO MINIMUM STAFFING RATIOS

520.4.1 Upon an increase in a facility's resident census, the facility shall be exempt from any corresponding increase in staffing ratios for a period of nine (9) consecutive shifts beginning with the first shift following the midnight census for the date of the expansion of the resident census.

520.4.2 When residents are relocated or transferred from facilities due to natural disaster, emergency or as a result of state or federal action,

the Department of Human Services may waive, for a period of no more than three (3) months from the date of transfer, some or all of any required increase in direct-care staff for the facility or facilities to whom the residents are relocated or transferred. Waivers will only be granted for good cause shown, and upon telephone, facsimile or written request. A grant of a waiver is within the sole discretion of the Office of Long Term Care. Facilities may apply for a waiver by writing the Director of the Office of Long Term Care. The written request should state, at a minimum:

- a. The date of the transfer for each resident;
- b. The number of residents transferred for each date in which residents were received from another facility;
- c. The anticipated date by which the facility will be able to meet the increased number of minimum staff for the total number of residents of the entire facility, including all residents received in transfer;
- d. The name of the facility from which the residents were transferred; and,
- e. A brief explanation as to why the facility's staffing cannot be increased prior to the anticipated increase date set out in c, above.

520.5 STAFFING REPORTS

520.5.1 By the fifth (5th) day of each month, each nursing facility or nursing home shall submit a written report of all shifts for the preceding month to the Office of Long Term Care, utilizing form **DMS-718**.

520.5.2 In addition, each report shall designate the shifts in which minimum staffing standards were not met, as set forth in form **DMS-718**.

520.6 FLEX STAFFING

520.6.1 Flex staffing permits facilities to vary the beginning and ending hours for shifts, so that facilities may maximize staff time to the benefit of residents. Regardless whether a facility employs shifts of greater duration than specified in these regulations – such as ten (10) or twelve (12) hour shifts – for purposes of computing minimum staffing ratios the facility shall base their computations on three shifts of equal length. Facilities can, however, designate that their shifts will begin earlier or later than specified in Sections **520.1.3** through **520.1.5**.

520.6.2 When facilities utilize flex staffing, the shifts must meet the staffing requirements set forth herein for the entire period of the shift. As way of example only, if a facility begins a shift at 5:30 a.m., the minimum staffing requirements for that shift, which would end at 1:30, would be minimum staffing requirements for the Day Shift as set forth in Sections **520.1.3** through **520.1.5**, and those minimums must be maintained throughout the entire shift.

520.6.3 The Office of Long Term Care shall be notified in writing when a facility implements a flex-staffing schedule. The written notice shall state the beginning and ending hours of each shift under the flex staffing.

520.7 PENALTIES

Violations of these regulations shall be punishable in accordance with Ark. Code Ann. § 20-10-1407 and 20-10-1408.

520.8 RESIDENT CARE NEEDS AND INCREASES IN STAFFING

The staffing standards set forth in Section 520.3 are *minimum* requirements that facilities must meet at all times, except as provided herein. In the event that the Office of Long Term Care determines that sufficient personnel are not employed or available to meet resident care needs, the Office of Long Term Care may require the facility to either increase staff on a per-shift basis or reduce resident census. In such cases, the Office of Long Term Care will notify the facility in writing of its determination, including the basis for the determination. In addition, the Office of Long Term Care will state the number of additional staff that must be employed or available and the date by which the additional staff must be employed or available; the amount by which the resident census must be reduced and the date by which that reduction must be achieved; or both.

In the event that the Director of the Office of Long Term Care determines that minimum staffing standards should be increased pursuant to Ark. Code Ann. § 20-10-1409(b)(2), the Director of the Office of Long Term Care shall certify the determination and any proposed regulatory increases to minimum staffing standards to the Director of the Division of Medical Services, who shall notify the Director of the Department of Human Services and the Legislative Council of the determination, and whether sufficient appropriated funds exist to fund the costs, as defined as direct-care costs by the Long Term Care Cost Reimbursement Methodology of the Long Term Care Provider Reimbursement Manual as in effect January 12, 2001, to be incurred by the proposed changes to the minimum staffing standards.

In no event shall minimum staffing standards be increased unless sufficient appropriated funds exist to fund the costs to be incurred by the proposed increases to minimum staffing standards.

MINIMUM STAFFING REPORTING FORM

THIS REPORT MUST BE TYPED. All fields must be completed for each reporting period. Indicate any shift in which minimum staffing requirements were not met by placing an asterisk beside the number of personnel for that shift for each category in which minimum staffing was not met. For example, if minimum staffing was not met for the Day Shift of the third day of the month because of insufficient direct care staff that were not licensed staff, an asterisk would be placed after the numbers in both the Total and Other fields.

Facility: _____ Month/Year: _____

Signature of Person Preparing this Report: _____

Day	Census	Day Shift Direct Care Staff			Evening Shift Direct Care Staff			Night Shift Direct Care Staff		
		Total	Licensed	Other	Total	Licensed	Other	Total	Licensed	Other
1										
2										
3										
4										
5										
6										
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