

**State of California
Office of Administrative Law**

In re:
Department of Public Health

Regulatory Action:

Title 22, California Code of Regulations

Adopt sections: 72329.2

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-0619-02

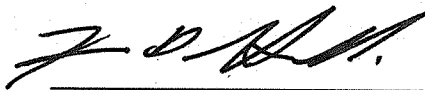
OAL Matter Type: Emergency (E)

This emergency rulemaking action by the Department of Public Health proposes to adopt regulations implementing minimum staffing requirements for skilled nursing facilities as established by statutes 2017, chapter 52 (SB 97).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 7/1/2018 and will expire on 12/29/2018. The Certificate of Compliance for this action is due no later than 12/28/2018.

Date: June 29, 2018



Kevin D. Hull
Senior Attorney

For: Debra M. Cornez
Director

Original: Dr. Karen Smith, Director
Copy: Charlet Archuleta

NOTICE PUBLICATION REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

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|------------------|---------------------------------|--------------------------|--|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER | EMERGENCY NUMBER 2018-0619-02E |
|------------------|---------------------------------|--------------------------|--|

ENDORSED - FILED

In the office of the Secretary of State of the State of California

JUN 29 2018

1:38 pm

For use by Office of Administrative Law (OAL) only

2018 JUN 19 P 3:36
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Public Health

AGENCY FILE NUMBER (if any)
DPH-17-011E

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | |
|--|--|------------------------|-------------------------------|
| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
| 3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
| OAL USE ONLY | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | NOTICE REGISTER NUMBER | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

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| 1a. SUBJECT OF REGULATION(S) Skilled Nursing Facilities 3.5 Direct Care Hours | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
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| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related) |
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) |
| ADOPT 72329.2 |
| AMEND |
| TITLE(S) 22 |
| REPEAL |

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|--|---|--|--|
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code, §11347.1)

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| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) July 1, 2018 |

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| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____ |

| | | | |
|--|------------------------------------|---|--|
| 7. CONTACT PERSON Charlet Archuleta | TELEPHONE NUMBER (916) 445-9403 | FAX NUMBER (Optional) (916) 636-6220 | E-MAIL ADDRESS (Optional) charlet.archuleta@cdph.ca.gov |
|--|------------------------------------|---|--|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

| | |
|--|-----------------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE 6/19/18 |
| TYPED NAME AND TITLE OF SIGNATORY Keith Van Wagner, Assistant Chief Counsel | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 29 2018

Office of Administrative Law

Amend

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

Adopt 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 a minimum of 2.4 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 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 with substantiating information to the Department. 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.

(2) If there is a change in the substantiating information, the facility shall notify the Department within 15 days of the change. A request for a waiver with substantiating information included shall be updated and resubmitted annually.

(3) 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.

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

(5) 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 a waiver request.

(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.