



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

March 8, 2024

AL TSA: NH #2024-009
**REPORTING AND INSTRUCTIONS OF MINIMUM STAFFING STANDARDS 3.4 HOURS OF
DIRECT CARE PER RESIDENT DAY (HPRD) TEMPORARY INCLUSION OF PREVIOUSLY
UNREPORTED HOURS FOR STATE Q2, Q3, AND/OR Q4, 2023**

Dear Nursing Facility/Home Administrator:

Nursing homes (NH) are required by the federal government in CFR [§483.70\(q\)\(1-5\)](#) to report all staffing data to CMS, at [CMS.Gov: Staffing data submission payroll based journal \(PBJ\)](#) by CMS's designated due date and in the format provided. This is a federal requirement that has remained constant, with regulatory activities ongoing. A state cannot amend or change a requirement written in federal law.

Washington Administrative Code (WAC) [388-97-1090](#) and RCW 74.42.360 requires each nursing home (NH) to provide a minimum of 3.4 hours of direct care hours per resident day (HPRD).

The department's authority to grant exceptions ended June 30, 2018, per RCW 74.42.360. Since WAC 388-97-1090 exceeds the department's authority RCS will be engaging in rulemaking to correct this.

During the public health emergency, 3.4 HPRD minimum staffing requirements under WAC 388-97-1090 were temporarily suspended. A reimplementation period followed, with targeted support services provided, to assist nursing homes' gradual return to full compliance. Citations for falling below the 3.4 HPRD requirements were not issued during this time.

[MB R23-049](#) & related [DPL NH #2023-024](#) explained that state 3.4 HPRD regulatory actions were to commence on October 27, 2023, for state fiscal quarter two (Q2), 2023 (April 1 – June 30, 2023) compliance.

As of state Q2, 2023 (April 1 – June 30, 2023) each nursing home has been required to remain in compliance with the 3.4 HPRD minimum staffing requirements found in [WAC 388-97-1090](#), [WAC Chapter 388-112B](#), [RCW 74.42.360](#), & [RCW 74.42.010](#). Regulatory activities, as outlined in [WAC 388-97-1090](#), were triggered if a nursing home's HPRD calculation fell below the quarterly 3.4 minimum staffing threshold.

To further support NHs return to compliance with state 3.4 HPRD reporting requirements, RCS will **temporarily** accept written requests for retroactive inclusion of previously unreported staff, agency, contract, and the eligible portion of GBHW hours for inclusion in the 3.4 HPRD calculation.

This interim process will remain in effect through state Q4, 2023 (Oct 1 – Dec 31, 2023).

Nursing Homes will submit written requests, with required documentation, to: RCSPolicy@dshs.wa.gov. The policy unit will verify hours and submit a written request to the Office of Rates Management with eligible hours for retroactive inclusion in the 3.4 HPRD calculation for state Q2 (April 1 – June 30, 2023), Q3 (July 1 – September 30, 2023), and/or Q4 (October 1 – December 31, 2023).

Beginning state Q1, 2024 (January 1 – March 31, 2024) additional hours, not submitted by deadline, will no longer be accepted for retroactive inclusion in the state 3.4 HPRD calculation.

To comply with RULE, each nursing home must complete the following:

- Ensure a minimum of 3.4 HPRD direct care minimum staffing level as required by [WAC 388-97-1090](#), [WAC Chapter 388-112B](#), [RCW 74.42.010](#), & [RCW 74.42.360](#).
- Report all mandatory data to CMS, in the format provided, by date due, at [CMS.Gov: Staffing data submission payroll based journal \(PBJ\)](#). This is a federal requirement that has remained constant with regulatory activities ongoing.
- Please see MB R24-016 for requirements to include a portion of eligible Geriatric Behavioral Health Worker (GBHW) hours in the 3.4 HRD calculation.

Data Submission Deadlines:

Timeframe:	CMS Deadline for submission of PBJ:	Rates Deadline for submission of eligible (GBHW) hours:	Rates Receives PBJ Data from CMS for Identified Quarter—Approximately:
January 1 – March 31	May 15th	May 30	October--Same Yr.
April 1 – June 30	August 14	August 29	January--Subsequent Yr.
July 1 – September 30	November 14	November 29	April—Subsequent Yr.
October 1 – December 31	February 14	March 1	July—Subsequent Yr.

- PBJ: Payroll Based Journal,
- GBHW: Geriatric Behavioral Health Worker.

- If a nursing home identifies additional hours, not previously submitted, for retroactive inclusion in the 3.4 HPRD calculation for state Q2 (April 1 – June 30, 2023), Q3 (July 1 – September 30, 2023), or Q4 (October 1 – December 31, 2023), a written request will be submitted, with all required documentation, to RCSPolicy@dshs.wa.gov.
- To accurately verify eligibility of submitted hours for retroactive inclusion in the state 3.4 HPRD calculation, all written requests must include all of the following:
 - The state quarter for which retroactive inclusion of hours is being requested; and
 - Explanation of circumstances resulting in hours not being submitted by deadline; and
 - Total number of hours submitted by category (CMS HPRD) and/or Geriatric Behavioral Health Worker (GBHW); and
 - Complete “3.4 HPRD Staffing Data & Coding” and attach the spreadsheet attached below; and
 - If submitting GBHW hours for inclusion in the 3.4 calculation, complete and attach the “GBHW Information & Attestation” document attached below; and
 - Attach the original PBJ data submitted for the identified quarter,
 - Attach all payroll data for the identified quarter; and
 - If additional hours were completed by agency and/or contract staff, attach related contract and payment documents for quarter under review.

Beginning state Q1, 2024 (January 1 – March 31, 2024) additional hours, not submitted by deadline, will no longer be accepted for retroactive inclusion in the state 3.4 HPRD calculation.

Surveyors will verify the accuracy of hours submitted by:

- [§483.70\(q\)\(1-5\)](#) outlines federal requirements that have remained constant, with regulatory activities ongoing. A state cannot amend or change a requirement written in federal law. As a result, a citation using [FTAG 851](#) must be issued in these circumstances.

- To comply with survey requirements outlined in federal regulation [§483.70\(q\)\(1-5\)](#), surveyors will review PBJ data submitted to CMS to determine if the facility submitted all mandatory PBJ data to CMS by date due and in the required format.
- Resources available for this purpose include CASPER reports, facility census, MDS, and payroll reports.
- If it is determined through records review and/or nursing home self-report, that facility staff, contract, and/or agency hours were not accurately and completely submitted to CMS, by deadline, a citation will be issued using [FTAG 851](#); and
- Notify the nursing home of citations being issued.

The Office of Rates Management will:

- Use data from CMS PBJ quarterly reports to calculate the 3.4 HPRD minimum staffing level; and
- Adjust the 3.4 HPRD calculation by subtracting Director of Nursing (DON) hours from hours reported to CMS when the facility has more than 60 licensed beds; and
- Adjust the 3.4 HPRD calculation to include eligible GBHW hours accurately submitted by deadline to nfrates@dshs.wa.gov using [Geriatric behavioral health sheets](#); and
- Calculate fines for non-compliance with 3.4 HPRD at the 150% or 200% level as outlined in [WAC 388-97-1090](#); and

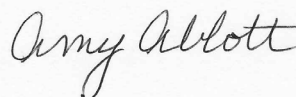
The Complaint Investigator will:

- Complete an onsite visit to the nursing home; and
- Gather information to determine if the facility submitted all mandatory PBJ data to CMS, by date due and in the required format; and
- Use CASPER reports, census information, reported staff hours, and payroll data to determine if staffing levels were constant throughout the quarter under review; and
- Gather information about any care and service-related concerns resulting from non-compliance with the 3.4 minimum staffing requirements; and
- If it is determined through records review and/or nursing home self-report, that facility staff, contract, and/or agency hours were not accurately and completely submitted to CMS, by deadline, issue a citation using [FTAG 851](#); and
- If additional concerns are identified during the investigation, make a referral to CRU; and
- Notify the nursing home of citations being issued.

Thank you for your continued commitment to resident health and safety. If you have any questions, please contact your local RCS Field Manager.

If you have any questions, please contact Jodi Lamoreaux, NH Policy Program Manager, at (360)464-0487 or Jodi.Lamoreaux1@dshs.wa.gov.

Sincerely,



Amy Abbott, Director
Residential Care Services

DSHS: “Transforming Lives”