**Section 300.1234 Penalties and Notice of Violation**

a) Notwithstanding any other provision of the Act or this Part, the Department will impose penalties for violations of the minimum staffing requirements of the Act and Section 300.1230, as follows:

1) *No monetary penalty will be issued for noncompliance during the implementation period, which will be July 1, 2020 through September 30, 2020. If a facility is found to be noncompliant during the implementation period, the Department will provide a written notice identifying the staffing deficiencies. The facility shall provide a sufficiently detailed correction plan to meet the statutory minimum staffing levels.*

2) *Monetary penalties will be imposed by the Department beginning no later than January 1, 2021, and quarterly thereafter, and shall be based on the latest quarter for which the Department has data.*

3) *Monetary penalties shall be established based on a formula that calculates, on a daily basis, the cost of wages and benefits for the missing staffing hours. All notices of noncompliance issued by the Department will include the computations used to determine noncompliance and establishing the variance between minimum staffing ratios and the Department's computations.*

4) *The penalty for the first offense shall be 125% of the cost of wages and benefits for the missing staffing hours. The penalty will increase to 150% of the cost of wages and benefits for the missing staffing hours for the second offense and 200% of the cost of wages and benefits for the missing staffing hours for the third and all subsequent offenses.*

5) *The penalty shall be imposed regardless of whether the facility has committed other violations of the Act* and this Part *during the same period that the staffing offense occurred.*

6) *The penalty may not be waived, but the Department may determine the gravity of the violation in situations in which there is no more than a 10% deviation from the staffing requirements and make appropriate adjustments to the penalty.*

A) A facility shall have 30 days from the receipt of the notice of violation to request an adjustment to the penalty pursuant to this subsection (a)(6).

B) This subsection does not apply to deviations due to a waiver granted under Section 300.1232.

7) *The Department may waive the penalty when unforeseen circumstances have occurred that resulted in call-offs of scheduled staff. This provision will be applied no more than 6 times per quarter.* (Section 3-202.05(g) of the Act) A facility shall have 30 days from the receipt of the notice of violation to request a waiver of the penalty pursuant to this subsection (a)(7). If the Department declines to waive the penalty, it will inform the facility of the reasons why. For the purposes of this Section:

A) An unforeseen circumstance includes, but is not limited to, a disaster as defined in Section 300.670(a), labor unrest, civil unrest, a viral epidemic or pandemic, family emergency, or any cause beyond the reasonable control of the facility.

B) "Six Times" means 6 unforeseen circumstances. If an unforeseen circumstance occurs, the facility shall document the type of unforeseen circumstance, the beginning and end dates of the unforeseen circumstance, and how many scheduled staff called off during the unforeseen circumstance. The facility shall submit the report to the Department within 24 hours after the end of the unforeseen circumstance. If the unforeseen circumstance is a viral epidemic or pandemic, the facility shall submit regular reports to the Department pursuant to Section 300.696.

b) *Nothing in the Act* or this Section *diminishes a facility's right to appeal* a Department finding of non-compliance with the minimum staffing requirements of Section 300.1230. (Section 3-202.05(g) of the Act) A facility shall have 30 days from the receipt of the notice of violation to file an appeal on a Department finding of non-compliance.

c) The Department will notify the facility of non-compliance with the minimum staffing requirements within 30 days after the latest quarter for which the Department has complete staffing data. The notice shall contain, at a minimum:

1) The year and quarter the staffing shortfall occurred;

2) A summary breakdown of the total penalty showing results of calculations made pursuant to subsection (d);

3) Citations to the Act and this Part relative to the violation;

4) The total amount of the fine, if any, the date by which payment is due to be paid, and accepted forms of payment;

5) An explanation of consequences for nonpayment, incomplete payment, or late payment (see subsection (e));

6) A statement of the facility's right to file an appeal of the violation, to request an adjustment of the penalty when there is no more than a 10% deviation from the staffing requirements, or request a waiver of the penalty for an unforeseen circumstance; and

7) The process for filing an appeal or requesting an adjustment or a waiver of the penalty.

d) The Department will use the following procedures to determine penalties for facilities that fail to meet minimum direct care staffing ratios:

1) The Department will calculate penalties for unmet direct care staffing hours using the most current median hourly wage data reported by U.S. Department of Labor Bureau of Labor Statistics (BLS) in the BLS' Occupational Employment Statistics' metropolitan and nonmetropolitan Area Occupational Employment and Wage Estimates for the State of Illinois, which is published at https://www.bls.gov/oes/current/ oessrcma.htm.

A) The hourly wage for unmet registered professional nurse hours will be determined by the most current median hourly wage available for RNs (defined as "registered nurses" with the BLS occupational code 29-1141) in the metropolitan area in which the nursing facility is located.

B) The hourly wage for unmet licensed practical nurse hours will be determined by the most recent median hourly wage available for LPNs (defined as "licensed practical and licensed vocational nurses" with the BLS occupational code 29-2061) in the metropolitan area in which the nursing facility is located.

C) The hourly wage for unmet hours of direct care staff who are not registered nurses or licensed practical nurses will be determined by the most recent median hourly wage available for CNAs (defined as "nursing assistants" with the BLS occupational code 31-1014) in the metropolitan area in which the nursing facility is located.

2) The Department will use the following formulas to determine the wage cost for each day's unmet direct care staffing hours when a staffing-hours shortfall is greater than zero. For the purposes of this Section, "median wage" refers to the BLS wage rate for the metropolitan or non-metropolitan area in which the facility is located.

A) The cost of RN hours shortfall = the RN hours shortfall x the median RN wage.

B) The cost of LPN hours shortfall = the LPN hours shortfall x the median LPN wage.

C) The cost of direct care hours shortfall = the direct care hours shortfall x the median CNA wage.

3) The Department will use the following procedures to add the cost of benefits to the cost of hourly wages identified in subsection (d)(2):

A) The Department will use a multiplier of 120% of the hourly wage that would have been paid for each hour of deficiency in skilled, intermediate or direct care. When calculating, under this subsection (d)(3), the combined wage and benefit value basis to determine a penalty for each violation, the wage per hour values shall be determined by the most recent cost reports filed with the Department of Healthcare and Family Services by facilities licensed under the Nursing Home Care Act.

B) The Department will calculate the total compensation costs (employee wages and benefits) of unmet direct care staffing hours using the following formula, which applies a multiplier based on the percentage identified in subsection (d)(3)(A) to the total direct care staffing hour shortfalls identified in subsections (d)(2)(A), (B), and (C):

Total Compensation Cost of Unmet Direct Care Staffing Hours = (1.0 + (the Cost of Benefits Per Hour Worked/the Cost of Wages Per Hour Worked)) X (Cost of RN Hours Shortfall + Cost of LPN Hours Shortfall + Cost of Direct Care Hours Shortfall)

4) The total penalty amount will be calculated based on the total compensation cost of unmet direct care staffing hours calculated in subsection (d)(3)(B), as follows:

A) If the violation is the facility's first violation for unmet direct care staffing hours, the Total Compensation Cost for Unmet Direct Care Staffing Hours will be multiplied by 125%.

B) If the violation is the facility's second violation for unmet direct care staffing hours, the Total Compensation Cost for Unmet Direct Care Staffing Hours will be multiplied by 150%.

C) If the violation is the facility's third violation or any violation beyond the third, the Total Compensation Cost for Unmet Direct Care Staffing Hours will be multiplied by 200%.

D) Any shortfall of hours within a quarter, regardless of whether the shortfall is in all or only one direct care staff category, constitutes one violation.

e) *If the person or facility against whom a penalty has been assessed does not comply with a written demand for payment within 30 days* after receiving a notice of violation, *the* Department will *issue an order to do any of the following:*

1) *Direct the State Treasurer or Comptroller to deduct the amount of the fine from amounts otherwise due from the State for the penalty and remit that amount to the Department;*

2) *Add the amount of the penalty to the facility's licensing fee. If the licensee refuses to make the payment at the time of application for renewal of its license, the license shall not be renewed;* or

3) *Bring an action in circuit court to recover the amount of the penalty.* (Section 3-310 of the Act)

(Source: Added at 45 Ill. Reg. 1134, effective January 8, 2021)