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Services Agency
**California Department of
Public Health**



EDMUND G. BROWN JR.
Governor

January 23, 2018

AFL 18-12

TO: Skilled Nursing Facilities

SUBJECT: Senate Bill (SB) 97: Implementation of 3.5 direct care hours and Assembly Bill (AB) 130: Quality and Accountability Supplemental Payments (QASP) eligibility clarification

AUTHORITY: Health and Safety Code sections 1276.5 and 1276.65, Welfare and Institutions Code section 14126.022

All Facilities Letter (AFL) Summary

This AFL notifies skilled nursing facilities (SNFs) of:

- the chaptering of SB 97 which requires 3.5 direct care service hours per patient day; and
- the chaptering of AB 130 which clarifies QASP eligibility for SNFs that receive a waiver of the SB 97 requirements.

Effective July 1, 2018, SB 97 (Chapter 52, Statutes 2017) requires SNFs, except those that are a distinct part of a general acute care hospital or a state-owned hospital or developmental center, to provide a minimum of 3.5 direct care service hours per patient day, with a minimum of 2.4 performed by certified nurse assistants.

The California Department of Public Health (CDPH), in consultation with stakeholders, will develop and adopt emergency regulations by July 1, 2018, to implement SB 97 and will provide notice at least 90 days prior to adopting regulations.

Under current law, CDPH must develop a procedure for facilities to apply for a waiver that addresses individual patient needs. SB 97 revises the minimum hours required from 3.2 nursing hours to 3.5 direct care service hours within the patient needs waiver language.

Through emergency regulations, all-facility letters, or other similar instructions, SB 97 directs CDPH to create a waiver of the direct care service hour requirements to address a shortage of appropriate health care professionals and direct caregivers by July 1, 2018. SB 97 requires CDPH to review waivers annually, and requires facilities seeking a waiver renewal to reapply annually. CDPH approved waivers are subject to revocation.

CDPH will also develop a schedule to issue penalties for violations of the staffing requirements that lead to harm.

AB 130 (Chapter 251, Statutes 2017) clarifies that for fiscal years (FY) 2017-18 and 2018-19, a facility that meets a minimum of 3.2 nursing hours per patient day remains eligible for QASP. Beginning in FY 2019-20, a SNF with a CDPH-approved waiver for direct care service hours per patient day continues to be eligible for participation for QASP if they provide a minimum of 3.2 nursing hours per patient day.

CDPH is hosting a series of stakeholder meetings to inform the standards to implement SB 97. For more information regarding on-going stakeholder meetings visit the SNF Staffing Requirements page.

CDPH's failure to expressly notify facilities of statutory or regulatory requirements does not relieve facilities of their responsibility for following all laws and regulations. Facilities should refer to the full text of all applicable sections of the HSC and the California Code of Regulations to ensure compliance.

Sincerely,

Original signed by Scott Vivona for

Jean Iacino
Deputy Director

Reference

Skilled Nursing Facility (SNF) Staffing Requirements:
<https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/Skilled-Nursing-Facility-Staffing-Requirements-Meetings.aspx>

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