



Delaware Residents' Protection Commission

EAGLES LAW STAFFING RATIO WAIVER APPLICATION INSTRUCTIONS

Delaware Resident's Protection Commission

DRPC's mission is to monitor Delaware's quality assurance system for nursing home residents in both privately operated and state operated facilities so that complaints of abuse, neglect mistreatment, financial exploitation and other complaints are responded to in a timely manner so as to ensure the health and safety of nursing home residents.

Delaware Residents' Protection Commission

History of Eagles Law

The DRPC was created in 1999 as part of a long-term care legislative package introduced by former Senator Robert Marshall and subsequently signed into law by the Governor. As part of this legislative package, the Division of Healthcare Quality (DHCQ), formerly known as the Division of Long-Term Care Residents Protection, was also created.

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DISCLAIMER



This training resource has been developed based on Delaware Code, current as of October 1, 2024, and is subject to change in response to State and/or Federal legislation.

OBJECTIVES

1. Familiarize skilled nursing facilities with the DRPC and specific relevant elements of Eagle's Law.
2. Orient facilities with the Eagle's Law Staffing Ratio Waiver process, as well as the role of the DHCQ and the DRPC in the process, based on Delaware code.
3. Provide instructions and information to ensure all parties understand how to complete the form.

Key Points

The staff waiver application is for use by skilled nursing facilities only.

In May 2023, the Joint Finance Committee added the following language to the Budget Epilogue: Section 187. "Long-term care facilities must continue to provide 3.28 hours of direct care per resident per day. However, the staffing ratios required in **16 Del.C.** §1162 are hereby suspended until July 1, 2024."

In June 2024, the Joint Finance Committee added the following language to the Budget Epilogue: Section 192. "Long-term care facilities must continue to provide 3.28 hours of direct care per resident per day. However, the staffing ratios required in **16 Del. C.** § 1162 are hereby suspended until January 1, 2025."

Effective 1/1/2025, the blanket staffing ratio waivers granted through State Budget Epilogue Language in 2023 and 2024 will no longer be effective.

The Delaware Resident's Protection Commission will have the authority to grant such waivers to an individual facility based on an application submitted by the facility.

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Authority to approve waivers is granted through Delaware Code:

16 DE CODE, Chapter 11, § 1168. Waiver.

A residential health facility may seek from the Delaware Resident's Protection Commission a time-limited waiver of the minimum staffing requirements required under §1162(c) and (e) of this title. Such waiver will only be granted upon a showing of exigent circumstances, including but not limited to documented evidence of the facility's best efforts to meet the minimum staffing requirements under §1162(c) and (e) of this title. Any such waiver will be time-limited and will include a plan and a timeline for compliance with this chapter. The Commission may seek input from the Department of Labor in terms of issues of labor availability in connection with any waiver request under this section.

Steps to Complete Application Form

1

Facility completes
Section A and
submits to DHCQ &
DRPC.

2

DHCQ completes
Section B and
submits to DRPC.

3

DRPC reviews
entire form and
completes
Section C.

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APPLICATION FORM INSTRUCTIONS

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**EAGLES LAW STAFFING RATIO WAIVER APPLICATION
INSTRUCTIONS**

SECTION A

**To be completed by the skilled nursing
facility.**

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SECTION A, QUESTIONS 1-3

1. Name and date of hire of current Nursing Home Administrator:

Name and date of hire of current Director of Nursing:

2. Census:

Total Beds:

What census would allow you to meet the minimum staffing ratios?

3. Does your facility have a specialty or secured unit(s), if so, specify type(s) (dementia, ventilator; etc.) or provide specialty services (hemodialysis; rehab; etc.)? If so, please describe.

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SECTION A, QUESTION 4

4. Is your facility accepting new admissions?

If yes, what type of admissions? Check all that apply.

Long-term

Rehabilitation

Specialty:

When was the last resident admitted?

Has the facility restricted admissions in order to comply with the staffing ratio requirement? YES_____ NO_____

If yes, please provide details.

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SECTION A, QUESTION 5

5. Describe situations at the facility within the last 90 days that have affected staffing (barriers to hiring, workforce reductions, change of ownership, etc.).

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SECTION A, QUESTIONS 6-7

6. Are there certain days or shifts when you are having difficulty meeting the required staffing ratios?
7. Do you use agency personnel to ensure that you meet the minimum staffing requirements? Include a spreadsheet showing agency usage over the last 6 months (include RN Supervisor, RN, LPN and CNA). If you do not use agency staffing, please explain the reason you do not.

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SECTION A, QUESTION 8

8. If the facility does use agency staffing, please respond to the following:

Does the facility provide an orientation to new agency staff?

If so, please describe orientation process.

Do new agency personnel work independently or with a “buddy”?

Please explain.

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SECTION A, QUESTIONS 9-11

9. Does the facility utilize overtime to attempt to meet the staffing ratio requirement?
If so, please include a spreadsheet showing overtime per classification (CNA, LPN, RN) for the last 6 months.
10. If your waiver is granted, what are your staffing ratio goals?
(The facility must maintain a 3.28 HPRD. Be specific regarding your ratios for RNs, LPNs and CNAs on all shifts.)
11. What is your plan of correction to ensure that this does not happen again? Are there potential solutions or resources that could be put in place to solve or alleviate staffing shortages overall?

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SECTION A, QUESTION 12-13

12. What other supports are/may be available during the requested waiver period?

- ☐ Trainees from clinical programs.
- ☐ Volunteers (in what areas).
- ☐ Extra staff from other disciplines (AT, OT, PT, etc.).
- ☐ Staff from other disciplines working overtime.
- ☐ Any other supports.

13. Provide staff (CNA, LPN, RN) turnover per quarter for the past year.

- ☐ What is the hourly starting salary for each position type?
- ☐ What actions has the facility taken to improve staff retention in the past year?

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SECTION B

To be completed by the DHCQ.

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SECTION B, QUESTIONS 1-2

1. Does this facility have a history of citations, staffing problems, fines in the last 2 years? (Please include any pertinent information for the DHNRQAC to consider.)
2. Attach the facility staffing numbers (ratios and HPRD) for the last 6 months, as routinely determined by the DHCQ.

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SECTION B, QUESTIONS 3-5

3. Have any staffing-related complaints (lack of staff, avoidable pressure ulcers, failure to change incontinent products, dehydration, falls, medication errors, healthcare associated infections, etc.) been filed against the facility in the past year? If so, please attach the complaint(s) and any investigation/survey.
4. Any other information the DHCQ feels would be appropriate for the DRPC to consider regarding the approval/denial of a request for staffing ratio waiver?
5. Does DHCQ recommend approval of the staffing ratio waiver request?
Yes_____ No_____

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SECTION C

To be completed by the DRPC.

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SECTION C, QUESTIONS 1-2

1. Patterns of non-compliance and staffing issues are noted. YES_____ NO_____ If so, explain.
2. The Nursing Home Administrator or the Director of Nursing has changed within the last year. YES_____ NO_____ If so, when (if more than once include all dates that apply)?

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SECTION C, QUESTIONS 3-5

3. The facility has used agency staff and employee overtime within the last year to meet the minimum staffing ratio requirement.

YES_____ NO_____

If so, note percentage of RN, LPN and CNA agency staff utilized and the amount of overtime used.

4. Has the facility limited admissions in order to meet the minimum staffing ratio requirement? YES_____ NO_____

5. Is their underlying cause explanation realistic and thorough? YES_____ NO_____

Explain.

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SECTION C, QUESTIONS 6-7

6. Are proposed solutions realistic, sufficient, sustainable, measurable and actionable?

YES_____ NO_____ Explain.

7. Waiver is APPROVED_____ DENIED_____

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**Additional Instructions &
Guidance**

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- Facilities must note on the application if this is the first waiver application submitted by the facility. If it is not the first application, facilities should note the date of the previous application(s) and whether it was/they were approved.
- All sections of the form must be signed and dated by the person completing the form.
- Facilities must attach a copy of the most recent facility assessment as directed by the Centers for Medicare and Medicaid Services (see details at F838, 483.71 and Memo QSO-24-13-NH).
- Facilities will complete Section A and forward the form electronically to the Director of the DHCQ and the DRPC Executive Director (contact information on next page).

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Division of Healthcare Quality (DHCQ)

DHSS_DHCQ_Staffing@delaware.gov

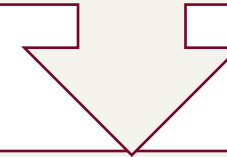
Delaware Resident's Protection Commission (DRPC)

EaglesLawWaiver@delaware.gov

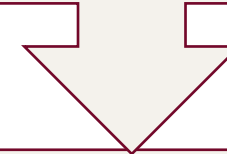


Next Steps

Once submitted, DRPC will keep the completed Section A on file for informational purposes.



DHCQ will complete Section B within 5 working days of receipt and will forward the completed Sections A and B to the DRPC.



DRPC will complete review of the form within 10 working days of receipt and will respond to the facility with a copy to the DHCQ.

EAGLES LAW STAFFING RATIO WAIVER APPLICATION INSTRUCTIONS

- Staff ratio waiver requests will be granted for a maximum of 90 days.
- Waivers may be renewed for an additional 90 days (total 180 days) with sufficient evidence that there has been improvement or that measures have failed and other avenues for resolving staffing issues have been/are being implemented/proposed.
- The waiver will be terminated immediately if it is discovered that the facility failed to comply with the term(s) of the waiver.

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**Important
Reminders**

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A waiver is granted for a specific timeframe and the response from the DRPC will include the start and end date for the waiver.

The DHCQ has the authority to enforce staffing ratios for Skilled Nursing Facilities effective 1/1/2025.

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Waivers may be granted by the DRPC for staffing ratios only. Facilities must continue to meet the required hours per resident per day (HPRD) of care.

The facility must continue to provide adequate staffing to meet the individualized needs of each facility resident.

Thank you!

Questions?