

Nursing Home Staffing: The Whole Truth

By Carl Bettinger, Attorney at Law

Almost everyone who has lived in a long term care setting, or has visited friends or family in one, or has worked in one, has at some point or another wondered, "Why aren't there more staff?" Some speak up and ask exactly that question. All too often, the answer from management is, "We are in compliance with state staffing requirements." Wrong answer. In fact, not even close.

The long term care industry typically measures nursing department staffing in "hours per patient day", often cryptically referred to as "hppd" or "ppd". When a facility says that its nursing department staffing is 3 hppd, what it means is that in a given day, the facility staffing and resident census is such that the average resident will receive three hours of nursing care in a 24 hour period. Nursing care in this context *includes* certified nurse aide care; so this means that in a 24 hour period, the average resident will receive three hours, total, of combined licensed nurse and nurse aide care. It is a matter of simple mathematics to show that three hours of care in a 24 hour period is very little: How long does it take to bathe a resident? Dress a resident? Help with grooming? Provide incontinence care? Help with meals? Deliver medications? Anyone who has tried to care for a loved one at home knows you cannot even come close to providing proper care with only three hours of care per day. In 2002, Congress studied this question and determined that to provide even minimally acceptable care, a well run nursing home would need to provide 4.5 hppd, of which 2.9 hppd should be nurse aide time. Less than 10 percent of U.S. nursing homes met these recommendations. <http://cms.hhs.gov/medicaid/reports/rp700hmp.asp>

New Mexico's current regulation, NMAC 7.9.2.50(F), sets *minimum* ppd levels. The regulation sets the level at an incredibly low 2.5 hppd, which translates in to less than one hour of nursing services per eight hour shift.

Nursing facilities across New Mexico have interpreted this to mean that so long as they staff with 2.5 hppd, they have met the legal requirement for staffing. Nursing homes not only cite this requirement to residents and families who complain of understaffing, but to their own staff.

Nothing could be further from the truth. The 2.5 hppd requirement is a floor *below which* a nursing home may not fall. In other words, if a nursing home staffs with less than 2.5 hppd, it is presumed to be understaffed. To make an analogy, if a driver has a blood alcohol content of over .08 he or she meets the legal definition of DWI. However, the overriding law is that one may not drive if one is drunk. So if the driver's level is .005, but the driver is swerving all over the road and clearly intoxicated, the driver is still DWI.

The overriding state and federal requirement for staffing is that the nursing home must provide sufficient staffing to meet all of the needs of all of the residents at all times. NMAC 7/9/2/50(F); 42 CFR 483.30(a). In other words, if residents' needs are not being met, it is no excuse that the nursing home is staffed at 2.5, or 3.0 or 4.0 or 5.0 hppd.

So the next time you or your loved one's needs are not being met, and the nursing home tells you "we're in compliance with the state minimum staffing requirements", show them a copy of the state or federal regulations and explain that it makes no difference how much hppd they have; if the patient's needs are not being met, the nursing home is violating the law. If that doesn't work, you should contact the New Mexico Department of Health and file a formal complaint.