

# **DOH Request for Information**

## **Supplemental Guidance for Penalty Reduction Request Application**

### **Information Requested in Penalty Reduction Application**

#### **Schedule A**

##### **Extraordinary Circumstances.**

##### **Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(a)**

*For the purposes of 10 NYCRR 415.13(f)(2)(ii)(a), extraordinary circumstances shall mean that the facility experienced a natural disaster; a national emergency affecting the facility has been officially declared; a State or municipal emergency affecting the facility has been declared pursuant to Article 2-B of the Executive Law; or the facility experienced a catastrophic event that caused physical damage to the facility or impaired the ability of facility personnel to access the facility. Provided, however, that the facility must first demonstrate, to the satisfaction of the Department, that such extraordinary circumstances could not have been prevented or mitigated through effective implementation of the facility's pandemic emergency plan, prepared pursuant to Section 2803(12) of the Public Health Law, and that the facility complied with the disaster and emergency preparedness requirements set forth in Section 415.26(f) of 10 NYCRR Part 415.*

##### **Information Requested in Application:**

- Short Description of the Event
- Date(s) of the Event
- Dates the event impacted the Facility or Employees
- Number RN's Impacted
- Number LPN's Impacted
- Number CNA's & NA's Impacted
- Copy of the facility's pandemic emergency plan
- The facility's plan for internal or external emergencies as set forth in Section 415.26(f)(1) of 10 NYCRR
- Document discussing how the event impacted the facility, how the facility implemented the emergency plan, if at all, and why the plan did not prevent the facility from failing to meet minimum standards

#### **Schedule B**

##### **Acute Labor Supply Shortage**

##### **Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(b)**

*An acute labor supply shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in the Metropolitan and Nonmetropolitan Area in which the facility is located, as such areas are defined by the federal Bureau of Labor Statistics.*

*For the purposes of determining whether a facility was located in an area experiencing an acute labor supply shortage during the period of non-compliance, the Commissioner shall issue a determination on a quarterly basis as to whether an acute labor supply shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in any Metropolitan or non-metropolitan Area of new York State.*

## **1. Health and Safety Plan**

### **Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(b)(3)**

*The fact that the facility is located in an area experiencing an acute labor supply shortage pursuant to 10 NYCRR 415.13(f)(2)(ii)(b) shall not serve as a mitigating factor unless the facility has demonstrated, to the satisfaction of the Department, that it has taken steps over the course of the quarter to ensure resident health and safety notwithstanding any labor supply shortage, including but not limited to discontinuing admissions or transferring residents to another appropriate facility.*

### **Information Requested in Application – Health and Safety Plan:**

Narrative outlining the steps the facility took to ensure the health and safety of the resident population during the quarter covered by the application.

#### **Additional guidance:**

The plan should narrate measures taken notwithstanding the acute labor supply shortage. As such, the Department is seeking additional measures taken beyond recruitment in this health and safety plan.

Please include strategic measures employed by the facility to ensure resident health and safety during the acute labor supply shortage, and to avoid the following events:

- Adverse drug events
- Resident falls or safety events
- Resident observation events, for example bed sores or infections
- Other clinically significant or urgent/emergent matters

Please consider efforts implemented to address the labor shortage, such as maximizing utilization of existing staff, monitoring of residents, internal audit/review measures, and improved communication efforts, for example.

## **2. Recruitment Efforts**

### **Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(b)(2)**

*The fact that the facility is located in an area experiencing an acute labor supply shortage pursuant to 10 NYCRR 415.13(f)(2)(ii)(b) shall not serve as a mitigating factor unless the facility has demonstrated, to the satisfaction of the Department, reasonable attempts to procure sufficient staffing during the period of non-compliance, notwithstanding the acute labor supply shortage. Reasonable attempts may include, but not be limited to, incentivizing*

*new personnel through increased wage and benefit offers and searching for personnel outside of the Metropolitan and Nonmetropolitan Area in which the facility is located.*

**Information Requested in Application:**

The application provides instructions for eighteen distinct types of recruiting efforts. At their discretion, the facility has the opportunity to provide information regarding the recruiting efforts they engaged in during the quarter covered by the application. With each recruiting effort, the facility must identify the date of the reasonable attempt, as defined in the instruction, and the identify the titles the facility was recruiting for with that recruiting effort.

**I. Agency Contract**

If the facility executed a new contract between the facility and a nursing or temporary agency capable of providing additional staff, please complete the above. Please include the name of the agency under Notes and the effective date of the agreement under Date. Please provide a narrative summarizing the agreement and the reason the facility did not acquire enough staff to bring the facility into compliance and attach a copy of the agreement between the facility and the agency.

**II. Benefit Increases (for new hires)**

If the facility Increased benefits for potential staff, on a separate sheet, please provide a description of increase, the terms of eligibility, provide the date of change or implementation (under the date) and attach a copy of the facility's documents outlining the available benefit package for prospective employees that outlines the availability of benefits.

**III. Cash Bonuses (Current & Prospective Employees)**

If the facility is offering a bonus to employees or prospective employees who bring a candidate to the facility and the candidate is hired (e.g., referral bonus or buddy bonus) or cash bonus to new hires (e.g., sign-on bonus or 90-day bonus). Please provide the date the program became effective and, in the notes, indicate the amount of the bonus. In addition, attach copies of the materials you use to promote the availability of the bonus to new and/or current employees.

**IV. Job Fairs/Hiring Events**

If the facility attended or hosted events for prospective employees, please include the date of the event and place the name of the event in the notes section, attach copies of the materials distributed at the event and, if the organizer is not the facility, please attach a copy of the signed agreement or confirmation from the organizer.

**V. Online Job Advertisements (General)**

If the facility posted positions on recognized job search sites (e.g., Indeed) or through general sites (e.g., Google AdWords), please provide the date that the campaign started or the position was posted and, in notes, provide the name of the site or vendor. In addition, please attach copies of the materials of any creative (i.e., the text and visuals) developed for or utilized by the campaign.

#### VI. Online Job Advertisements (Social Media)

If the facility's activities included advertisements/sponsored posts on social media via either their own page or working with a third party, please use the date of the initial post as the date and put the name of the social media platform in the notes. In addition, please attach a copy of the facility's agreement with the third party, if applicable.

#### VII. Partnership (Education Institutions)

If the facility worked with educational institutions to link with new graduates and/or provide training to students, hoping that they will consider employment there after graduation, please check the box above and provide the name of the institution in the notes section and, under date, provide the date the relationship began. In addition, please provide a summary of the working relationship between the facility and the institution.

#### VIII. Partnership (Other Healthcare Facility)

If the facility established a relationship with another healthcare facility to provide or share staff. Please provide the name of the institution in the notes section and, under the date, provide the date the relationship began. In addition, attach a narrative outlining the relationship between the facility and their partner, a copy of the agreement, and indicate whether the other facility is a related party.

#### IX. Recruiters

If the facility hired or contracted with a recruiter to bring potential candidates to the facility. Enter the name of the individual or agency in the notes and use the effective date of the contract or hire date for the date in the field above. In addition, provide a copy of the contract or, if the recruiter is an employee, an overview of the recruiters' activities.

#### X. Relocation Assistance (Prospective Employees)

If the facility provided cash and/or non-monetary assistance with for an employee that is relocating to the area to work at the facility, please provide the date the facility initiated the relocation assistance plan. Please provide a summary of the assistance available, including the terms of eligibility, and copies of the materials promoting the availability of the assistance.

#### XI. Base Salary Increases (Prospective Employees)

If the facility increased wages for potential staff, use the effective date of the change for the date above, and provide a schedule outlining the starting salaries before and after the change, by title.

#### XII. Sponsoring International Candidates

If the facility is sponsoring a new international candidate(s) (e.g., H-1B visas for foreign citizens), please use the date the application was submitted as the date above, identify the candidate in the note, and, attach a narrative that includes the terms of employment and the current disposition of the application.

#### XIII. Traditional Advertising (Multimedia)

If the facility advertises their available positions using television or radio ads, please use the date the campaign started as the date, please put the name of the vendor or agency in the notes and attach a narrative that includes the details of the media buy and a summary of the messaging and add a copy of the agreement.

#### XIV. Traditional Advertising (Print)

If the facility advertises their available positions through newspaper ads, including classifieds, or utilizes mass mailing services, please enter the date the campaign began as the date above and the vendor under the notes. In addition, attach a copy of the advertisement and a copy the agreement or a confirmation notice from the newspaper.

#### XV. Transportation

If the facility provides assistance getting employees to and from the job (Uber, facility hired a driver and uses the facility's vehicle, paying for out of the area travel), please enter the date that the facility started providing this service and attach a narrative that explains the terms of eligibility and describes the assistance provided.

#### XVI. Union Outreach/Programs

If the facility worked with employee unions to attract and train new employees, add the date of engagement as the date in the field above, enter the name of the union under the notes, and attach a narrative describing the assistance provided by the union, including the name of the program (if applicable).

#### XVII. Increased Pay (Overtime, Weekend, or Shift Differential)

If the facility increased the additional amount offered to employees who work weekend, holiday, or hard to fill shifts in an attempt to induce employees to work additional hours, use the effective date of the change for the date above, and provide a schedule outlining the pay rates before and after the change.

#### XVIII. Education/Training

If the facility provided additional training to staff in order to learn new skills or qualify for a promotional position or a certification/license, use the effective date of the program for the date above, and please attach a description of the training, the positions or licenses the employees are training for, and list any accommodations the facility makes for the employee to allow them to engage in the training.

## **Schedule C**

### **Verifiable Union Dispute**

#### **Regulatory Reference: Title 10, Section 415.13(f)(2)(ii)(c)**

A verifiable union dispute exists between the facility and nurse aides, certified nurse aides, licensed practical nurses, or registered nurses employed or contracted by such facility, resulting in a labor shortage at the facility.

#### **Information Requested in Application:**

- Start Date
- End Date (if resolved)
- Titles of employees impacted
- Name of the union
- Current Disposition (if the dispute is ongoing)
- The facility's Strike Plan
- Official written notification from the union, i.e., Strike Notice