**Section 300.1232 Waiver of Registered Professional Nurse Staffing Requirements**

a) *Upon application by a facility, the Director may grant or renew a waiver, in whole or in part, of the registered professional nurse staffing requirements contained in Section 3-202.05(e) of the Act* and Section 300.1230(c) of this Part, *considering the criteria in* Section 300.320, *if the facility demonstrates to the Director's satisfaction that the facility is unable, despite diligent efforts, including offering wages at a competitive rate for registered professional nurses in the community, to employ the required number of registered professional nurses and that the waivers will not endanger the health or safety of residents of the facility.*

b) *A facility in compliance with the terms of a waiver granted under Section 3-303.1(c) of the Act* and this Section *will not be subject to fines or penalties imposed by the Department for violating the registered professional nurse staffing requirements of Section 3-202.05(e) of the Act* and Section 300.1230(c). *Nothing in the Act* or this Section *allows the Director to grant or renew a waiver of the minimum registered professional nurse staffing requirements provided in 42 CFR 483.35(b) to a facility that is Medicare-certified or to a facility that is both Medicare-certified and Medicaid-certified.*

c) *Waivers granted under the Act* and this Section *will be reviewed quarterly by the Department, including requiring a demonstration by the facility that it has continued to make diligent efforts to employ the required number of registered professional nurses, and shall be revoked for noncompliance with any of the following requirements:*

1) *For periods in which the number of registered professional nurses required by law is not in the facility, a physician or registered professional nurse shall respond immediately to a telephone call from the facility.*

2) *The facility* to *notify the following of the waiver: the Office of the State Long Term Care Ombudsman, the residents of the facility, the residents' guardians, and the residents' representatives.* (Section 3-303.1(c) of the Act)

d) *A copy of each waiver application and each waiver granted or renewed* by the Department *will be on file with the Department and available for public inspection. The Director will annually review the file and recommend to the Long-Term Care Facility Advisory Board any modification in this Part suggested by the number and nature of waivers requested and granted and the difficulties faced in compliance by similarly situated facilities.* (Section 3-303.1(d) of the Act)

e) If the Department grants a waiver to a facility under this Section, *the facility shall* immediately *notify the following of the waiver*:

1) *The Office of the State Long Term Care Ombudsman*;

2) *The residents of the facility*;

3) *The residents' guardians*;

4) *The residents' representatives* (Section 3-303.1(c)(2) of the Act);

5) Individuals seeking information from the facility prior to admission to the facility; and

6) The Illinois Department of Healthcare and Family Services Bureau of Long-Term Care.

f) A request for a waiver from the registered professional nurse staffing requirements shall be made in writing to the Department, specifying the following:

1) *A detailed explanation of why the facility is unable, despite diligent efforts, including offering wages at a competitive rate for registered professional nurses in the community, to employ the required number of registered professional nurses* (Section 3-303.1(c) of the Act);

2) A detailed description of the programs or services offered by the facility for which the waiver is requested;

3) *A detailed explanation of why the waiver will not endanger the health or safety of residents of the facility* (Section 3-303.1(c) of the Act);

4) The number of residents in the facility and the level of care they require, the location and number of ambulatory and non-ambulatory residents, and residents' decision making capacity; and

5) The time period for which the waiver is requested.

g) The Department may revoke a waiver granted to a facility if the facility fails to comply with any of the requirements in the Act and this Section.

h) A facility operating under an initial license shall not be eligible for a waiver of registered professional nurse staffing requirements.

i) A facility that has been subject to any of the following actions by the Department in the three years prior to application shall not be eligible for a waiver of registered professional nurse staffing requirements:

1) Issuance of one or more Type "AA" violations if operated by the same owner at the time of the waiver application;

2) Issuance of two or more Type "A" violations if operated by the same owner at the time of the waiver application; or

3) Issuance of two consecutive annual or bi-annual certification surveys with substantiated substandard quality of care deficiencies.

j) *No waiver shall exceed the duration of the current license or, in the case of an application for license renewal, the duration of the renewal period.* (Section 3-303.1(a) of the Act) For facilities with two-year licenses, no waiver shall be granted for a period that exceeds one year. Waivers shall not be transferable.

k) The Department will post on its website a list of facilities with approved waivers by no later than June 30 of each year.

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