12-006.04C Nursing Staff Resources and Responsibilities: The facility must provide sufficient nursing staff on a 24-hour basis, with specified qualifications as follows, to provide nursing care to all residents in accordance with resident care plans.

12-006.04C1 Director of Nursing Services: The facility must employ a Director of Nursing Services full-time, who may serve only one facility in this capacity. The Director of Nursing Services of the facility must be a registered nurse. The Director of Nursing Services is responsible for the following:

1. Administrative authority, function, and activity of the nursing department;
2. Orientation and inservice education of the nursing services staff;
3. Establishment and implementation of nursing services, objectives, standards of nursing practices, nursing policy and procedure manuals and written job descriptions for each level of nursing personnel;
4. Establishment and implementation of methods of coordination of nursing services with other resident services in meeting each resident’s needs;
5. Preadmission evaluation of residents; establishment and implementation of criteria for admission to the facility;
6. Recommendation of the number and levels of nursing personnel to be employed;
7. Nursing staff development; and
8. Establishment and implementation of complete nursing assessments and nursing care plans for residents, and ongoing evaluation and updating of care plans to reflect the current overall condition of the residents.

12-006.04C1a The full-time registered nurse requirement as a Director of Nursing Services may not be waived.

12-006.04C1b The Director of Nursing Services may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.
12-006.04C1c The facility must notify the Department in writing within five working days when a vacancy in the Director of Nursing Services position occurs, including who will be responsible for the position until a full-time Director of Nursing Services is secured. The Department must be notified in writing within five working days when the vacancy is filled indicating effective date, name, and license number of the person assuming Director of Nursing Services responsibilities.

12-006.04C2 Registered Nurse Requirement: Except when waived under 175 NAC 12-006.04C2a or 12-006.04C2b, skilled nursing facilities and nursing facilities must use the services of a registered nurse for at least eight consecutive hours a day, seven days a week.

12-006.04C2a Registered Nurse Waiver in a Nursing Facility: The Department may waive the requirement that a nursing facility certified under Title XIX of the federal Social Security Act, as amended, use the services of a registered nurse for at least eight consecutive hours per day, seven days per week, if:

1. The facility demonstrates to the satisfaction of the Department that it has been unable despite diligent efforts, including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel;

2. The Department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; and

3. The Department finds that, for any periods in which a registered nurse is not available, a registered nurse or physician is obligated to respond immediately to telephone calls from the facility; or

4. The Department of Health and Human Services Finance and Support has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions of 12-006.04C2a, items 1-3, have been met.

A waiver granted under this section is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified personnel. The Department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-006.04C2b Registered Nurse Waiver in a Skilled Nursing Facility: The Department may waive, for up to one year, the requirement that a skilled nursing facility certified under Title
XVIII of the Federal Social Security Act, as amended, use the services of a registered nurse for more than 40 hours per week if:

1. The facility is located in a non-urban area where the supply of skilled nursing facility services is not sufficient to meet the needs of individuals residing in the area;

2. The facility has one full-time registered nurse who is regularly on duty at the facility 40 hours per week; and

3. The facility has:
   a. Only residents whose physician has indicated through orders or admission or progress notes that the residents do not require the services of a registered nurse or a physician for more than 40 hours per week; and
   b. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide the necessary services on days when the regular, full-time registered nurse is not on duty.

A waiver granted under this subsection is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel.

12-006.04C3 Charge Nurse Requirement: Except when waived under 175 NAC 12-006.04C4 or 12-006.04C5 of this section, skilled nursing facilities and nursing facilities must designate a licensed nurse to serve as a charge nurse on each tour of duty. Intermediate care facilities must designate a licensed nurse to serve as a charge nurse for one tour of duty each 24 hours.

12-006.04C3a The charge nurse is responsible for the total nursing care delivered on his or her tour of duty on the assigned unit. Charge nurse responsibilities are as follows:

1. Through assignment, delegate and/or direct to other nursing personnel the direct nursing care of the specific residents on the basis of staff qualifications, size and physical layout of the facility, characteristics of the resident load, and the emotional, social, and nursing care needs of residents;

2. Be knowledgeable and responsive to the physical and emotional needs of all residents;

3. Complete and accurate medication administration;

4. Provide direct resident care as required;
5. Participate in the review, revising and implementation of residents’ plan of care;

6. Notify the Director of Nursing Services, physician, and family of changes in resident condition, i.e., injury, accident, or adverse change; and,

7. Complete documentation describing nursing care provided, including resident response and status.

12-006.04C4 24-Hour Nurse Staffing Waiver in a Nursing Facility: The Department may waive the requirement that a nursing facility certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed nurse on a 24-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

1. The facility demonstrates to the satisfaction of the Department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for nursing facilities, to recruit appropriate personnel;

2. The Department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility; and

3. The Department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

4. The Department of Health and Human Services Finance and Support has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of 175 NAC 12-006.04C4, items 1-3 have been met.

A waiver granted under this section is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel. The Department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-006.04C5 24-Hour Nurse Staffing Waiver in a Skilled Nursing Facility: The Department may waive the requirement that a skilled nursing facility use licensed nurses on a 24-hour basis, seven days a week, including the requirement for a charge nurse each tour of duty, if:
1. The facility demonstrates to the satisfaction of the Department that it has been unable, despite diligent efforts including but not limited to offering wages equal to or greater than the community prevailing wage rate being paid nurses at nursing facilities, to hire enough licensed nurses to fulfill such requirements;

2. The Department determines that a waiver of the requirement will not endanger the health or safety of residents of the facility; and,

3. The Department finds that, for any period in which staffing requirements cannot be met, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility.

A waiver granted under this subsection is subject to annual review by the Department. As a condition of granting or renewing a waiver, a facility may be required to employ other qualified licensed personnel.

12-006.04C6 Notification of Waiver

12-006.04C6a The Department will provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation.

12-006.04C6b The skilled nursing facility or nursing facility granted a waiver must provide written notification to each resident of the facility or, if appropriate, to the guardian, designee, or immediate family of the resident.

12-006.04C7 Other Nursing Personnel: The facility must assign a sufficient number of qualified nursing personnel who are awake, dressed and assigned to resident care duties at all times.

SECTION A -- Nursing Facility

Nursing Facility. To be classified as a facility, the institution shall comply with the following staffing requirements:

a. Minimum requirements for nursing staff shall be based on the ratio of two and eight-tenths (2.80) hours of direct nursing care per resident per twenty-four (24) hours. Staffing
requirements are based upon resident census. Based upon the physical layout of the nursing facility, the licensing agency may increase the nursing care per resident ratio.

b. Each facility shall have the following licensed personnel as a minimum:

1. Seven (7) day coverage on the day shift by a registered nurse.

2. A registered nurse designated as the Director of Nursing Services, who shall be employed on a full time (five [5] days per week) basis on the day shift and be responsible for all nursing services in the facility.

3. Facilities of one-hundred eighty (180) beds or more shall have an assistant director of nursing services, who shall be a registered nurse.

4. A registered nurse or licensed practical nurse, shall serve as a charge nurse and be responsible for supervision of the total nursing activities in the facility during the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shift. The nurse assigned to the unit for the 11:00 p.m. to 7:00 a.m. shift may serve as both the charge nurse and medication/treatment nurse. A medication/treatment nurse for each nurses’ station shall be required on all shifts. This shall be a registered nurse or licensed practical nurse.

5. In facilities with sixty (60) beds or less, the director of nursing services may serve as charge nurse.

6. In facilities with more than sixty (60) beds, the charge nurse may not be the director of nursing services or the medication/treatment nurse.

c. Non-Licensed Staff. The non-licensed staff shall be added to the total licensed staff, to complete the required staffing requirements.

d. There shall be at least two (2) employees in the facility at all times in the event of an emergency.