

# 3.5 / 2.4 Waiver ABC's: Patient Acuity & Workforce Shortage Waivers

Presented by:

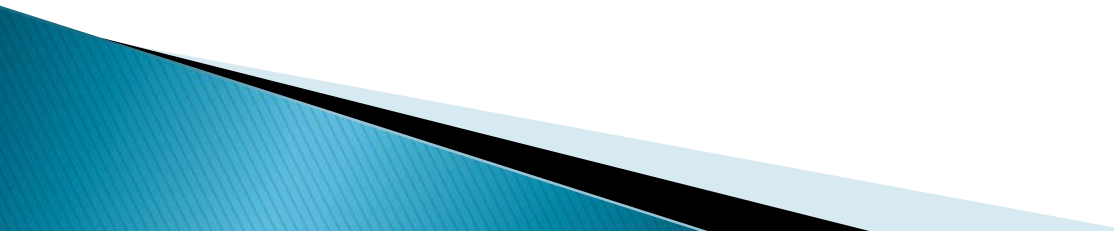
**Eszter L. Neuman**

CAHF Fall Education Symposium  
DoubleTree by Hilton Hotel  
285 East Hospitality Lane  
San Bernardino, California 92408  
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# Important CDPH resources

- ▶ <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/Skilled-Nursing-Facility-Staffing-Requirements-Meetings.aspx>

# Law and Guidance: Acuity Waiver

- ▶ AFL 18-17
  - ▶ Health & Safety §1276.65
  - ▶ Title 22 CCR Section 72329.2
  - ▶ Title 22 CCR Section 72213
  - ▶ Title 22 CCR Section 51215.5(e)
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# Law and Guidance: Workforce Shortage Waiver

- ▶ AFL 18-16
- ▶ Health & Safety §1276.65

# Acuity Waiver

- ▶ July 1, 2018 effective date – retroactive
- ▶ Surveys begin October 1, 2018 (3 month look back)
- ▶ Waiver submission anytime after July 1, 2018
- ▶ No known waiver approvals to date
- ▶ Currently, annual renewals will be required

# Acuity Waiver

- ▶ Unclear whether changes are being made to the regulation or not, so the regulation will either post for [more] public comment in October or final regulations will become effective January 1, 2019
  - Subacute units
- ▶ No administrative penalty, i.e. financial enforcement (until January – July 1, 2019...?)

# Acuity Waiver

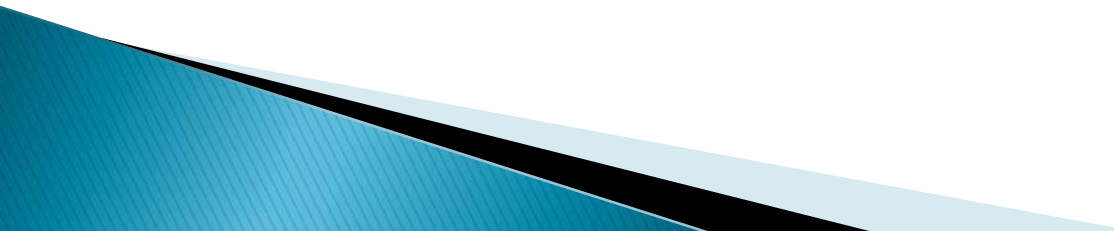
- ▶ Facility must submit evidence that it will [continue to] staff no less than 3.5 licensed nursing hours per patient day
  - Assumes regulatory compliance as of 7/1/18
  - Staffing and retention data
- ▶ Facility must also submit evidence of why, based on its resident needs, the 2.4 CNA hour requirement may be properly waived for the building
  - Facility Assessment
  - Quality of care
  - 5 star

# Workforce Shortage Waiver

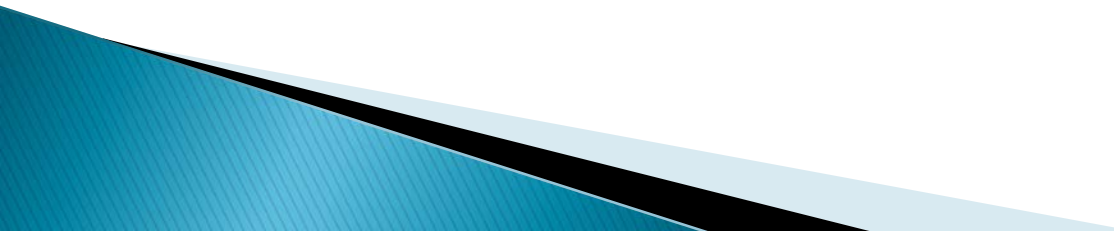
- ▶ Can request waiver of the 3.5 direct care service hours requirement and/or the 2.4 CNA hours requirement
- ▶ May not staff below 3.2 even with approved waiver
- ▶ May also request a patient acuity waiver
- ▶ Should be submitted by July 1, 2018, but will be accepted until September 1, 2018 (rolling basis)
- ▶ Renewed on an annual basis in April



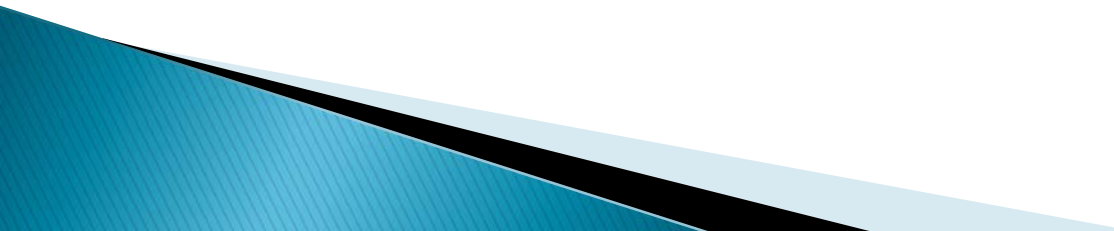
# Workforce Shortage

- ▶ Efforts to address workforce shortage
  - ▶ Detailed plan for resident care to continue to meet resident needs and ensure quality despite shortage
  - ▶ Post notice of pending waiver
  - ▶ Limitations based off prior A and AA citations, license suspension or revocation
  - ▶ 3 year look back
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# Workforce Shortage

- ▶ Complete and accurate documentation demonstrating workforce shortage
  - ▶ Located in shortage area
  - ▶ Recruitment and retention efforts
  - ▶ Recruitment plan
  - ▶ Competitive salaries
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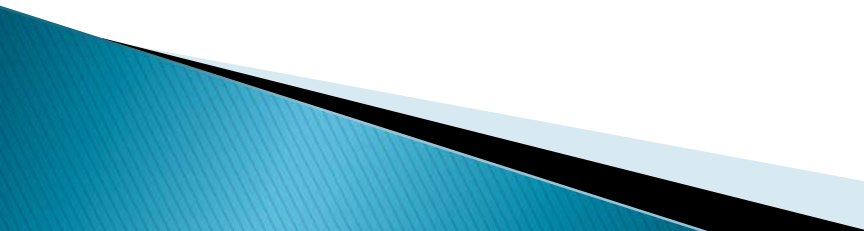
# Workforce Shortage

- ▶ Currently, annual renewals will be required
  - ▶ Known approvals?
  - ▶ DPH may request additional information
  - ▶ Waiver approval retroactive to 7/1/18 - requiring compliance with 3.2 direct care service hour for the duration of the waiver from that date
  - ▶ Waiver revocation
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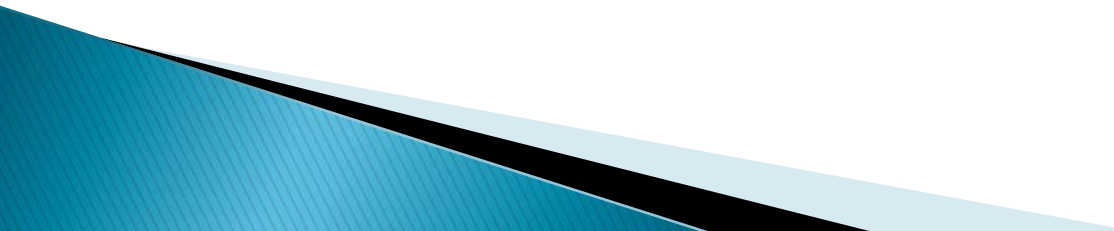
# 2019

- ▶ Enforcement may begin
- ▶ What will that look like?

# Civil Litigation Risk Issues

- ▶ There is some precedent in the Workforce Shortage waivers that certain exhibits (i.e. employment recruitment plans) will not be shared as part of a public records request
  - ▶ Protected trade secrets
  - ▶ Facilities shall
    - (1) post a notice of a pending waiver (not the actual waiver request) in a public location in the facility,
    - (2) facilities with an approved waiver must post the waiver (as opposed to the contents of the waiver request) within the facility, and
    - (3) facilities shall provide written notice of approved or pending waivers to potential residents prior to admissions
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# Civil Litigation Risk Issues

- ▶ Still need affirmative acknowledgment on the part of the facility that it is only admitting and accepting patients it can properly provide care for
  - ▶ Appreciated risk associated with increased staffing and cannot take patients it cannot provide care for
  - ▶ Facility Assessment (42 Code of Federal Regulations §483.70(e))
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# Thank you for your time and attention

## Eszter L. Neuman

Phone: (323) 854-9886

*Note: This class is intended to provide general information only.  
For specific legal advice applicable to your individual situation,  
please consult an attorney.*

Tyler & Wilson, LLP  
5455 Wilshire Boulevard, Suite 1925  
Los Angeles, California 90036  
Email: [inquiries@tyler-law.com](mailto:inquiries@tyler-law.com)  
Phone: (323) 655-7180