

National Nursing Home Stakeholder Call

Minimum Staffing Standards for Long-Term Care Facilities

Final Rule Overview

Wednesday, April 24, 2024

Center for Clinical Standards and Quality
Clinical Standards Group

Background

- In February 2022, the Biden-Harris Administration announced a comprehensive set of reforms aimed at improving the safety and quality of care within the nation's nursing homes. Part of these reforms included CMS proposing minimum staffing standards.
- The final rule, which was informed by public comment and the totality of available evidence, represents a critical step in addressing this important issue by holding nursing homes accountable for providing adequate staffing thereby creating a long-term care system where residents can safely age with dignity.

Finalized Minimum Staffing Requirements

The final rule consists of three core staffing requirements:

1. Minimum nurse staffing standards;
2. RN onsite 24 hours a day, 7 days a week, and
3. Enhanced facility assessment requirements

Minimum Staffing Standards

- CMS finalized a total nurse staffing standard of 3.48 hours per resident day (HPRD), which must include at least 0.55 HPRD of direct registered nurse (RN) care and 2.45 HPRD of direct nurse aide care.
- Facilities may use any combination of nurse staff (RN, licensed practical nurse [LPN] and licensed vocational nurse [LVN], or nurse aide) to account for the additional 0.48 HPRD needed to comply with the total nurse staffing standard.

RN On-site Requirement

- An RN must be onsite 24 hours a day, 7 days a week, and available to provide direct resident care.
- The 24/7 RN can include the Director of Nursing (DON); however, they must be available to provide direct resident care.

Facility Assessment Requirement

CMS finalized several updates to the facility assessment as a means of strengthening these requirements, including:

- Facilities must use evidence-based methods when care planning for their residents, including consideration for those residents with behavioral health needs.
- Facilities must use the facility assessment to assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in the resident population.

Facility Assessment Requirement Continued

- Facilities must include the input of the nursing home leadership, including but not limited to, a member of the governing body and the medical director; management, including but not limited to, an administrator and the director of nursing; and direct care staff, including but not limited to, RNs, LPNs/LVNs, and NAs, and representatives of direct care staff as applicable. The LTC facility must also solicit and consider input received from residents, resident representatives, and family members.
- Facilities are required to develop a staffing plan to maximize recruitment and retention of staff consistent with what was described in the [President's April Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers](#).

Regulatory Flexibility

CMS finalized that LTC facilities may qualify for a temporary hardship exemption from the minimum nurse staffing standards and 8 hours of the 24/7 RN requirement.

Regulatory Flexibility- To Qualify

Facilities may qualify for a hardship exemption only if they meet the following criterion:

- The facility is located in an area where the supply of RN, NA, or total nurse staff is not sufficient to meet area needs as evidenced by the applicable provider-to-population ratio for nursing workforce (RN, NA, or combined licensed nurse and nurse aide), which is a minimum of 20% below the national average, as calculated by CMS using data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau.

Regulatory Flexibility- To Receive

Qualifying facilities will receive a hardship exemption by completing all of the following:

- Documenting a good faith effort to hire and retain staff, such as through job postings, the number and duration of vacancies, job offers made, and competitive wage offerings.
- Documenting a financial commitment to staffing, including the amount the facility expends on nurse staffing relative to revenue.
- Posting the exemption status within the facility.
- Providing residents, prospective residents, and the State Ombudsman with an individual notice of the exemption status.

Regulatory Flexibility- Examples

- The facility may receive an exemption from the total nurse staffing requirement of 3.48 HPRD if the combined licensed nurse and nurse aide to population ratio in its area is a minimum of 20 percent below the national average.
- The facility may receive an exemption from the 0.55 RN HPRD requirement and an exemption of 8 hours a day from the RN on-site 24 hours per day, for 7 days a week requirement if the RN to population ratio in its area is a minimum of 20 percent below the national average.
- The facility may receive an exemption from the 2.45 NA HPRD requirement if the NA to population ratio in its area is a minimum of 20 percent below the national average.

Regulatory Flexibility- CMS Determination

- Prior to being considered, the LTC facility must be surveyed to assess the health and safety of the residents.
- If CMS determines the facility is in a workforce unavailability area, the LTC facility's documentation of a good faith effort to hire and retain staff and the LTC facility's documentation of a financial commitment must be submitted to the State or CMS. CMS will then determine if the facility will be granted an exemption from enforcement.

Regulatory Flexibility- Exception

Facilities are not eligible for an exemption if any one of the following is true:

- They have failed to submit their data to the Payroll Based Journal System.
- They have been identified as a special focus facility (SFF).
- They have been identified within the preceding 12 months as having: widespread, or a pattern of, insufficient staffing that resulted in actual harm to a resident; or an incident of insufficient staffing that caused or is likely to cause serious harm or death to a resident.

Staggered Implementation: Non-Rural Facilities

Implementation of the final requirements will occur in three phases over a 3-year period for all non-rural facilities. Specifically, for non-rural facilities:

- Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
- Phase 2 — Within 2 years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.
- Phase 3 — Within 3 years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

Staggered Implementation: Rural Facilities

Implementation of the final requirements will occur in three phases over a 5-year period for all rural facilities. Specifically, for rural facilities:

- Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
- Phase 2 — Within 3 years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.
- Phase 3 — Within 5 years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

Closing Remarks and Helpful Links

For more information and a link to the final rule, please visit the Nursing Home Resource Center webpage at:

[Nursing Home Resource Center | CMS](#)

Thank you for your participation!