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Minimum staffing standards for long-term care facilities

By Gabriel Imperato and Isiah Shechtman

Introduction

The Centers for Medicare & Medicaid Services (CMS) issued the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting final rule.^[1] CMS issued a proposed rule and analyzed over 46,000 comments from the public to promulgate the final rule.

Safety and quality concerns stem from chronic understaffing in LTC facilities. The final rule establishes minimum staffing standards for LTC facilities; it addresses the ongoing safety and quality concerns for the 1.2 million residents receiving services in Medicare- and Medicaid-certified LTC facilities each day. Studies have shown that appropriate staffing levels benefit LTC facility residents by improving the quality of care received as well as improving health outcomes.^[2] Additionally, appropriate staffing levels benefit LTC staff by providing the support they need to safely care for residents, thus preventing burnout and reducing staff turnover. These benefits will lead to more consistent care and improved safety and quality of services.

Apart from increasing the quality of care provided to LTC facility residents, these regulations also address a line of healthcare fraud cases in which the primary evidence of fraud was the staffing levels at the facility. In these cases, the facilities submit claims for services rendered to patients. However, the facilities were staffed with such few employees that providing the services that were billed would be impossible. Therefore, the facility’s staffing levels were the primary evidence that the claims submitted were fraudulent. The final rule confronts this fraudulent scheme and deters facilities from sacrificing the quality of care provided to residents for financial gain.

Minimum staffing standards

HPRD requirements

The minimum staffing standards set a nationally applicable baseline for nursing staff hours that an LTC facility must provide to ensure high-quality care for residents. Each facility across the country has diverse needs depending on factors like size. For example, a facility with hundreds of residents requires more nursing hours

than a facility with only a few. Thus, the final minimum staffing standards are measured by “hours per resident day” (HPRD), a metric that considers the number of residents at each facility.

The final rule requires LTC facilities to provide a minimum total nurse staffing standard of 3.48 HPRD. This total must include at least .55 HPRD of care provided by registered nurses (RNs) and 2.45 HPRD of care provided by nurse aides (NAs). “Hours per resident day” is defined as staffing HPRD, which is the total number of hours worked by each type of staff divided by the total number of residents as calculated by CMS. For example, a facility with 100 total residents would be required to provide, at minimum, 348 total staffing hours, 55 RN hours, and 245 NA hours per day. Importantly, these standards set the minimum requirements regardless of the individual facility’s case mix. In facilities where the residents require a higher level of care, it is likely that higher standards will be required.

The total nurse staffing standard of 3.48 HPRD must be implemented by May 11, 2026, for nonrural facilities and by May 10, 2027, for rural facilities. The requirements related to providing 0.55 RN and 2.45 NA HPRD must be implemented by May 10, 2027, for nonrural facilities and by May 10, 2029, for rural facilities. Counties with less than 50,000 people are considered rural. This definition of rural is in accordance with the Office of Management and Budget.¹³¹

24/7 on-site RN requirement

The final rule requires an RN to be on-site 24 hours a day, seven days a week. RNs provide skilled nursing care, and residents with increasing medical complexity and acuity of health conditions require substantial resources and care provided by an RN.

Previously, the LTC facility staffing regulations only required an RN to be on-site eight consecutive hours a day, seven days a week. The LTC facility had the discretion to decide what an eight-hour period would be for the on-site RN. The previous regulation, therefore, left the LTC facility without an RN on-site for as long as 16 hours each day. To avoid placing LTC residents at unnecessary risk due to the absence of an RN, the final rule requires an RN to be on-site 24 hours a day, seven days a week, and available to provide direct resident care.

The 24/7 on-site RN requirement and the minimum staffing standards are evaluated separately, meaning compliance with the on-site RN requirement does not simultaneously constitute compliance with the minimum staffing standards. Overall, the new staffing regulations will increase staffing in more than 79% of nursing facilities nationwide. Additionally, the specific RN and NA HPRD requirements exceed the existing minimum requirements in nearly all 50 states. The effectiveness of these new requirements will be continuously reviewed. If the analysis indicates that additional increases are warranted and feasible, then the minimum standards may be revisited and increased to support the findings.

The 24/7 on-site RN requirement must be implemented by May 11, 2026, for nonrural facilities and by May 10, 2027, for rural facilities. Again, counties with less than 50,000 people are considered rural.

Hardship exemption

Recognizing that facilities may need additional flexibility as they adopt the minimum staffing and 24/7 RN requirements, the final rule allows LTC facilities to request a hardship exemption. For the 24/7 RN requirement, the hardship exemption could allow a facility to operate without an RN on-site for up to eight hours per day. However, for any period when the on-site RN requirements are exempted, facilities must have an RN, nurse practitioner, physician assistant, or physician available to respond immediately to telephone calls from the facility. For the minimum staffing requirements, the hardship exemption allows a qualifying LTC facility to

operate below the minimum staffing requirements.

Hardship exemptions are only available in limited circumstances. The facility must meet the following four criteria to qualify for the exemption:

1. The workforce must be unavailable. This is measured by having a workforce per labor category at least 20% below the national average for the applicable nurse staffing type. For example, to qualify for an exemption from the total nurse staffing requirement of 3.48 HPRD, the total nurse staff (including licensed nurses and NAs) to population ratio in the area must be at least 20% below the national average. Alternatively, to qualify for an exemption from the 0.55 RN HPRD requirement or of eight hours a day from the 24/7 RN requirement, the RN-to-population ratio in the area must be at least 20% below the national average.
2. The facility must make a good-faith effort to hire and retain staff.
3. The facility must provide documentation of its financial commitment to staffing.
4. The facility must disclose its exemption status in three ways:
 1. The facility must post notice of its exemption status in a prominent location, the extent to which the facility doesn't meet the minimum staffing requirements, and the time frame to which the exemption applies.
 2. The facility must provide to each resident, resident representative, prospective resident, or prospective resident representative individualized notice of the facility's exemption status, the extent to which the facility doesn't meet the minimum staffing requirements, the time frame in which the exemption applies, and a statement reminding residents of their rights to contact advocacy and oversight entities.
 3. The facility must send a copy of the notice to a representative of the state Office of the Ombudsman for Long-Term Care. Posting notice in the facility, providing notice to individuals, and sending notice to the state ensures that a facility's authorization to operate below the final rule's requirements is publicly available information.

Notwithstanding eligibility under the criteria previously discussed, a facility cannot receive the hardship exemption if any of these four situations occur:

1. If the facility failed to submit payroll-based journal data in accordance with redesignated 42 C.F.R. § 483.70(p).
2. If the facility is a special focus facility.
3. If the facility has been cited for widespread insufficient staffing with resultant resident actual harm or a pattern of insufficient staffing with resultant resident actual harm, as determined by CMS.
4. If the facility has been cited at the "immediate jeopardy" level of severity with respect to insufficient staffing within the 12 months preceding the survey during which the facility's noncompliance is identified. The exemption eligibility restrictions ensure that an LTC facility with a history of being understaffed and providing inadequate care is subjected to the regulations that aim to address and remedy that specific pattern of behavior.

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