

LONG TERM CARE & SENIOR LIVING BLOG

# CMS Issues Final Rule for Minimum Staffing Standards for Nursing Homes

AUTHOR: KEVIN PEEK

On April 22, 2024, CMS issued the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting final rule. [\[1\]](#) The final rule was issued a little over seven months after the proposed rule was submitted by CMS on September 6, 2023. During this seven-month period, CMS reported reviewing over 46,000 public comments submitted in response to the proposed rule.

## Key Staffing Proposals

The new regulations introduce comprehensive nurse staffing requirements, which include:

- **Minimum Nurse Staffing Standards:** Facilities must maintain a total of 3.48 hours per resident day (HPRD) (an increase from 3.0 hours in proposal) of total direct nursing care to residents, with at least 0.55 HPRD provided by Registered Nurses (RNs) and 2.45 HPRD by Nurse Aides (NAs).
- **24/7 RN Presence:** An RN must be onsite at all times to provide skilled nursing care.
- **Enhanced Facility Assessment Requirements:** Facilities are required to conduct thorough assessments to ensure compliance with the staffing standards.

To address the increased 3.48 from 3.0 HPRD, CMS stated that facilities can use any combination of nurse staff (RN, LPN, LPVN, or nurse aides) to account for the additional 0.48 HPRD needed to comply.

Enforcement actions, also called remedies, that may be taken against LTC facilities that are not in compliance with these federal participation requirements include, but are not limited to, denial of payment by CMS for all Medicare and/or Medicaid individuals, civil money penalties, and/or termination from the program.

## Staggered Implementation of Requirements

CMS has outlined a staggered timeframe to implement the new requirements, believing that this takes into account workforce challenges faced by LTC facilities:

- Phase 1 - Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
- Phase 2 - Within two 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 three years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

While CMS expects LTC facilities to meet these new standards, CMS indicated that in addition to offering a statutory waiver of requirement to provide licensed nurses on a 24-hour basis, the CMS rule will also offer hardship exemptions to the HPRD and 24/7 onsite RN requirements, to apply only in limited circumstances.

Acknowledging the unique challenges of rural LTC facilities related to staffing, the CMS rule finalized a later implementation date for rural facilities (as defined by the Office of Management and Budget):

- Phase 1 - Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
- Phase 2 - Within three 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 five years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

#### **Nursing Home Staffing Campaign and Industry Concerns**

Last year, CMS announced that it would be investing over \$75 million in an effort to increase the number of nurses in nursing homes by providing financial incentives for nurses to work in the nursing home environment. This could include tuition reimbursement and to promote awareness of career pathways in the nursing field. However, as LTC industry leaders expect the costs to the facilities to be in the billions over the next decade, this offer seems to have little, if any, impact on the industry's concerns and anticipated challenges.[\[2\]](#)

Additional concerns and consequences of the new rules include the created burden given the current staffing shortages at LTC facilities, the anticipated financial strain and likely resulting rising costs of care, and the incredible challenges rural facilities will face. These criticisms reflect the complexity of implementing such sweeping changes in the healthcare industry and underscores the need for a balanced approach that considers the realities of the current workforce and the financial implications for LTC facilities.

#### **Transparency in Medicaid Payments**

In addition to staffing requirements, CMS will require states to report the percentage of Medicaid payments spent on compensation for direct care workers and support staff. This move aims to ensure that funds are appropriately allocated to those delivering care.

#### **Conclusion**

While the final rule by CMS reflects an intention to foster the provision of high-quality care for the numerous residents of LTC facilities in the U.S., it cannot be overlooked that the rule creates great concern for those working in the industry of resulting negative consequences, rising costs, and an insurmountable burden of fulfilling the new staffing level standard.

The final rule is scheduled to be published on May 10, 2024.

[1] <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicaid-0>

[2] <https://www.mcknights.com/news/extra-cms-publishes-rule-outlining-final-staffing-requirements/>