



AFSCME Facts

Federal Nursing Home Minimum Staffing Standard May 16, 2024

In May, the U.S. Department of Health and Human Services (HHS) issued a final nursing home staffing standard that applies to nursing homes receiving Medicare or Medicaid funding. The final rule also requires nursing homes and certain intermediate care facilities to report on the share of their Medicaid funding that goes to pay employee compensation. This fact sheet describes key aspects of the rule.

Does the nursing home minimum staffing rule set explicit hours requirements for direct care providers?

Yes. Nursing homes will be required to provide a minimum of 3.48 total hours of nursing care per resident per day (HPRD). Of this total, at least 2.45 HPRD must be provided by nurse aides (such as certified nursing assistants, or CNAs). At least 0.55 HPRD must be provided by registered nurses (RNs). Notably, the rule does not contain a minimum standard for licensed practical nurses/licensed vocational nurses (LPNs/LVNs). The remaining 0.48 HPRD may be filled out by either RNs, LPNs, LVNs or CNAs to meet the total staffing requirement.

How are hours per resident per day calculated?

HPRD are the staffing hours per resident per day. This is the total number of hours worked by each type of applicable staff divided by the total number of residents as calculated by the Centers for Medicare & Medicaid Services (CMS).

Is it always good enough for a nursing home to meet the minimum staffing standard?

No. This rule sets a *minimum* standard for all covered nursing homes without regard to the case mix. If the acuity needs of residents in a facility require a higher level of care, a higher total will likely be required.

Some employers will likely attempt to characterize the staffing standards as a static target or a ceiling, rather than a floor. This is incorrect. Also, note that the federal government is not forcing nursing homes to lay off, phase out or reduce hours for LPNs. Likewise, nursing homes will still need all critical support staff who are not subject to the staffing standard.

How do nursing homes determine whether they need higher staffing levels?

The rule strengthens the existing facility assessment requirement for purposes of determining appropriate direct care staffing levels at the facility level. HHS intends the assessment process to determine, based on individual resident acuity, the appropriate resources needed to care for

residents during day-to-day and emergency operations. This assessment may indicate a need for direct care staffing levels that exceed the minimum standards. Facilities are required to use evidence-based methods to undertake the assessment, which must be reviewed or updated annually. They must also document the assessment and develop a staffing plan meant to maximize recruitment and retention of direct care staff.

What role do staff and their unions play in assessing staffing needs?

Facility assessments must include input from direct care staff (RNs, LPNs, LVNs and CNAs) and union representatives of direct care staff.

How does this rule affect state nursing home staffing laws?

Most states have some form of nursing home minimum staffing standards. Nothing in this rule would prevent states from issuing or updating their standards to exceed the federal standards. However, all covered facilities must comply with the federal standards, regardless of whether an existing state standard is lower.

How else does the rule change RN requirements?

Facilities will be required to have an RN on site and available to provide direct care 24 hours per day, seven days a week. The director of nursing may count towards this requirement. Under the prior rule, a facility was only required to have an RN on site at least eight consecutive hours each day.

When do the new requirements go into effect?

The final rule will be implemented in phases:

- Facilities will be required to meet the facility assessment requirements by August 8, 2024 (though HHS has not yet issued any additional guidance explaining how facilities will demonstrate compliance).
- Facilities must meet the 24/7 RN requirement along with the 3.48 HPRD total nurse staffing requirement by May 10, 2026.
- Facilities must meet the 2.45 HPRD nurse aide requirement and the 0.55 HPRD RN requirement by May 10, 2027.

HHS is giving rural facilities more time to comply: They will have three years to meet the total nurse staffing requirement and the 24/7 RN requirement, and five years to meet the 0.55 HPRD RN and 2.45 HPRD nurse aide requirements.

Are there any waivers and exemptions from the staffing requirements?

Facilities may be eligible to receive exemptions from the 0.55 HPRD RN requirement, the 2.45 HPRD nurse aide requirement or the 3.48 HPRD total nurse staffing requirement if the applicable nurse to population ratio is at least 20% below the national average. Under this same criterion, facilities may receive an 8-hour per day exemption regarding physical RN presence. In such

instances, they must have an RN, nurse practitioner, physician assistant or physician available to immediately respond to phone calls.

Facilities will be required to document financial commitments and good faith efforts to hire before they can receive an exemption. Facilities are also required to post in a prominent and public place any staffing exemptions, while also notifying current and prospective residents of any such exemptions.

What are facilities required to disclose about their workers' pay?

States will be required to report to CMS, at the facility level, on the percentages of Medicaid payments for services in nursing homes and intermediate care facilities for individuals with intellectual disabilities that go towards worker compensation. This would include both direct care and support staff compensation. States must also make this information publicly available.

This requirement is not in effect until June 2028 at the earliest.

How will the staffing standards be enforced?

HHS intends to use the existing survey, certification and enforcement process. Typically, nursing homes are surveyed on an annual basis. Therefore, it is not clear whether or how HHS will respond in real time to ongoing daily violations of the minimum staffing standards.

Nursing homes already provide staffing data to CMS quarterly through the payroll-based journal (PBJ) system. However, CMS has indicated they will not be relying solely on PBJ data submissions for purposes of enforcement.