



Regulatory Roundup

Weekly Webinar for Long-Term Care Professionals

 [IHCA.org/regulatory-roundup](https://ihca.org/regulatory-roundup)

PRESENTERS

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May 9, 2024



Today's Agenda

- Minimum Staffing Rule and The Facility Assessment
– Lori Davenport



Upcoming Education

- Documentation for Dialysis Care, webinar, May 21: Details [HERE](#)
- 5-Star Quality Rating System, live online course, May 30, Details [HERE](#)
- SNF DON Workshop, in-person June 25-26, Details [HERE](#)
- Infection Prevention & Control “101” for Assisted Living, on-demand webinar, Details [HERE](#)

Minimum Staffing Rule



- Released on April 22, 2024
- Scheduled to be published in the Federal Register on May 10, 2024
- Effective date of rule is 6/21/2024
- Some components have implementation dates beyond the effective date.
- Interpretive Guidelines associated with the rule have not been released.
- Compliance will be evaluated based on PBJ and survey process.

What the Rule is Not



- **Not funded**
- Required staff across the country are simply not available
- Cost will be between 3 or 4 hundred thousand a year for most, if not more.
- There is not a pipeline being built to produce the number of RNs needed.
- IHCA members will be able to find out their short comings of the rule in the Trend Tracker application – will announce when this benefit is available.

HPRD and RN Requirements

Hours Per Resident Day HPRD

Registered Nurse (RN) Requirements

- HPRD – meet or exceed a minimum of 3.48 HPRD for total nurse staffing including and not limited to:
 - A minimum of 0.55 hours per resident day for RNs

What RNs Count ?

- Director of Nursing (DON), as well as RNs with administrative duties, likely to count toward the 0.55 HPRD for Registered Nurses if they are available to provide resident care when needed.
- Each facility will need to evaluate how they will determine “available for resident care” and how the interpretive guidelines (not published yet) will guide surveyors in this evaluation of compliance.
- Must have an RN onsite 24 hours a day, 7 days a week available to provide direct care to residents.

Certified Nursing Aides



- A minimum of 2.45 hours per resident day for Nurse Aides (NAs)
- The SOM defines NAs as the following:

Nurse Aides include certified nurse aides in training and medication aides/ technicians, which all require training.

Question



- Is meeting the minimum hours enough to comply with the rule ?

Answer:

No

Requirement of participation – Maintain the highest practicable, physical, mental and psychological well-being for residents. Ensure sufficient staff with appropriate competencies using assessments, acuity and diagnosis all in accordance with the facility assessment.

Minimum staffing required may not be enough = minimum staffing rule

Implementation Dates

	Urban Areas		Rural Areas	
Facility Assessment	90 Days after publication of final rule	August 8, 2024	90 Days after publication of final rule	August 8, 2024
3.48 HPRD and 24/7 RN Requirement	2 years after publication of final rule	May 10, 2026	3 years after publication of final rule	May 10, 2027
0.55 RN and 2.45 NA HPRD	3 years after publication of final rule	May 10, 2027	5 years after publication of final rule	May 10, 2029 (earlier section of rule states May 10, 2028)

Waiver Options - NFs



NFs only – Waiver of requirement to provide licensed nurses and a registered nurse on a 24-hour basis.

- Demonstrate to the satisfaction of the State that you are unable, despite diligent efforts (offering wages at the community prevailing rate for nursing facilities), to recruit sufficient staff.
- The State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility.
- The State finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility.

Waiver Options NFs

- The waiver will be reviewed by the State annually.
- In granting or renewing a waiver, a facility may be required by the State to use other qualified, licensed personnel.
- The State agency granting a waiver of such requirements provides notice of the waiver to the Office of the State Long- Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with a mental disorder who are eligible for such services as provided by the protection and advocacy agency.

Waiver Options NFs



- The facility must notify residents of the facility and their resident representatives of the waiver.

Waiver Options SNFs



- The facility is **located in a rural area** and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area.
- The facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week.
- Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hours period; or •
- Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

Waiver Options SNFs



- The Secretary provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with developmental disabilities or mental disorders; and
- The facility must notify residents of the facility and their resident representatives of the waiver.
- The waiver is subject to annual renewal by the Secretary

Hardship Exemptions

- In addition to the waiver options, CMS has outlined a hardship exemption process and required criteria.
- Exemptions will be determined by a survey process during a regular scheduled survey and not an additional one. Surveys cannot be requested for the purpose of evaluation of the exemption.

Exemption Criteria



- The workforce is 'unavailable' – as measured by having a nursing workforce that is a minimum of 20% below the national average for the applicable nurse staffing type (calculated using the Bureau of Labor Statistics (BLS) and Census Bureau data). Facilities may qualify for an exemption from one, two, or all three of the requirements (combined HPRD, RN HRPD, and/or NA HPRD).
- The facility makes a good faith effort to hire and retain staff. Good faith efforts include offering at least prevailing wages, to recruit and retain appropriate personnel. Evidence of this would be through job postings, vacant positions, and wage comparisons.
- The facility documents its financial commitment to staffing. Facilities will need to provide information on how the facility expends on nurse staffing relative to revenue.

Exclusions

- ✓ Facilities that failed to submit PBJ data according to re-designated § 483.70(p);
- ✓ Facilities that have Special Focus Facility (SFF) designation; and
- ✓ Facilities cited for widespread insufficient staffing with resultant resident actual harm or a pattern of insufficient staffing with resultant resident actual harm or cited at the immediate jeopardy level of severity with respect to insufficient staffing as determined by CMS, within the 12 months preceding the survey during which the facility's non-compliance is identified.

Enforcement Remedies



- No specifics provided however several things mentioned in the rule.
 - The remedies that may be imposed include, but are not limited to, the termination of the provider agreement, denial of payment for new admissions, and/or civil money penalties.
 - Remedies include all those available under 42 CFR part 488, subpart F- Enforcement of Compliance for Long-Term Care Facilities with Deficiencies.
 - CMS will survey facilities for compliance with the updated LTC requirements in the rule and enforce them as part of CMS's existing survey, certification, and enforcement process for LTC facilities.

Enforcement Remedies



- **CMS will publish more details on how compliance will be assessed after publication of this final rule in advance of each implementation date for the different components of the rule.**
- CMS will display its determinations of compliance with staffing standards on care compare.
- Facilities will also be required to post a notice when they are out of compliance with the standards.

Medicaid Institutional Payment Transparency Reporting Provisions

- States must report to CMS on the percentage of Medicaid payments for services in nursing facilities and ICF/IIDs that is spent on compensation for direct care workers (such as nursing and therapy staff) and support staff (such as housekeepers and drivers providing transportation for residents)..

Medicaid Institutional Payment Transparency Reporting Provisions

- Reporting requirements apply regardless of whether a state's Long-Term Services and Supports (LTSS) delivery system is fee-for-service or managed care.
- This will address the link between sufficient payments being received by the institutional direct care and support staff workforce and access to and, ultimately, the quality of services received by Medicaid beneficiaries.

Medicaid Institutional Payment Transparency Reporting Provisions

- These requirements are consistent with efforts to address the sufficiency of payments for home and community-based services (HCBS) to direct care workers and access to and the quality of services received by beneficiaries of HCBS finalized in the Rule for Ensuring Access to Medicaid Services that was published on April 22, 2024.
- States will have to comply with these requirements beginning four years from the effective date of this final rule

Facility Assessment

§483.71

Nursing Facilities must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations (including nights and weekends) and emergencies. The facility must review and update the assessment, as necessary, and at least annually. The facility must also review and update the assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of the assessment

Facility Assessment



- (a) The facility assessment must address or include the following: a. The facility's resident population including, but not limited to: i. Both the number of residents and the facility's resident capacity; ii. The care required by the resident population, **using evidence-based, data-driven methods** that consider the types of diseases, conditions, physical and **behavioral needs**, cognitive disabilities, overall acuity, and any other pertinent facts that are present within that population, **consistent with and informed by individual resident assessments as required under §483.20**

Facility Assessment



- Additions
- §483.73(a)(1)(b)
- In conducting the facility assessment, the facility assessment must ensure:
 - a. Active involvement of the following participants in the process:
 - i. Nursing home leadership and management, including but not limited to a member of the governing body, the medical director, an administrator, and the director of nursing; and
 - ii. Direct care staff including, but not limited to RNs, LPN/LVNs, NAs, and representatives of the direct care staff, if applicable.
 - iii. The facility must also solicit and consider input received from residents, resident representatives, and family members.

Facility Assessment



- The facility must use the facility assessment to:
- i. Inform staffing decisions to ensure that there are enough staff with the appropriate competencies and skill sets necessary to care for its residents' needs as identified through resident assessments and plans of care as required in §483.35(a)(3).
- ii. Consider specific staffing needs for each shift, such as day, evening, night, and adjust as necessary based on any changes to its resident population.
- iii. Develop and maintain a plan to maximize recruitment and retention of direct care staff. iv. Inform contingency planning for events that do not require activation of the facility's emergency plan, but do have the potential to affect resident care, such as, but not limited to, the availability of direct care nurse staffing or other resources as needed for resident care

Facility Assessment



- iv. Inform contingency planning for events that do not require activation of the facility's emergency plan, but do have the potential to affect resident care, such as, but not limited to, the availability of direct care nurse staffing or other resources as needed for resident care

IHCA Members



- There is a Facility Assessment Action Brief
 - Tips
 - Suggestions
 - Walks you right through it.

Essential Family Caregiver Program



<https://www.ihca.org/resource/essential-family-caregiver-program-implementation-required/>

<https://www.coronavirus.in.gov/files/EFC%20toolkit%206.28.21.pdf>

Q&A



Next Regulatory Roundup – June 13, 2024