

What You Need to Know: CMS Minimum Staffing Proposed Rule *September 2023*

OVERVIEW OF PROPOSED FACILITY REQUIREMENTS

Creates specific thresholds for RNs and Nurse Aides, including a 24/7 RN coverage requirement. Based on acuity, higher RN and NA levels will be required.

Number of Hours Required		
Registered Nurse (RN)	0.55 HPRD	can ONLY be met by RNs; may include a DON
Nurse Aide (NA)	2.45 HPRD	can ONLY be met by NAs
Licensed Practical Nurse (LPN)	No specific requirement; not mentioned within proposed rule	

The proposed rule also outlines the expansion of the facility assessment requirement as follows:

- Creates new regulatory section for facility assessment at §483.71 (separating from Administration)
- Requires facilities develop recruitment & retention plan for direct care staff
- Address staffing for all shifts and days of week
- Require greater inclusion of direct care staff in development
- Use evidence-based data driven methods that consider resident condition

EXEMPTIONS & WAIVERS

Yes, but extensive criteria must be met for a **hardship exemption**. The process is cumbersome and not user friendly, and most in need are unlikely to qualify. Facilities must be surveyed to assess the health and safety of residents. There is also a waiver for the **24/7 RN requirement** and uses the existing process for current RN 8 hour/7-day requirement.

Phase-In Period (after rule is finalized)		
	Urban	Rural
Hours per resident day (HPRD) requirement	3 years	5 years
24/7 RN requirement	2 years	3 years
Facility assessment requirement	60 days from date rule is finalized. This is only a minimum and if the facility assessment indicates you have higher acuity residents, survey staff will be looking for more than the minimum staffing levels.	

PENALTIES FOR NON-COMPLIANCE

Numerous forms of penalties exist as outlined in proposed rule, including:

- DPNA, DPOC, directed in-service, or other enforcement actions
- CMPs
- Temporary management
- State monitoring
- Transfer of residents
- Provider agreement termination

FUNDING

This proposed federal rule is an unfunded mandate – there is no funding for increased staff. There will be a \$75 million investment by the federal government for workforce development initiatives. CMS estimates the overall 10-year cost of this proposed rule to be \$40.6 billion, or \$4.1 billion annually.

WHAT CAN I DO TO MAKE MY VOICE HEARD?

Your Action Is Needed!

Contact CMS to weigh in on their proposal for SNF minimum staffing requirements!

Helpful tips for constructing your comments to CMS (*must be submitted by November 6 – [see link below](#)*):

1. Personalize your comments to drive home the message:

- Explain who you are and your commitment to quality
- Explain lack of workforce and detail a personal example of not being able to find workers
- Detail your recruitment challenges – existing open positions, inability to fill shifts, hiring difficulties
- Discuss your use of agency staff and related costs
- Tell them that a staffing mandate will not create workers
- What you do and how long you have been in this line of work
- Why you work in long-term care
- Description of your building – location, number of units, profile of your residents' needs
- Mention any AHCA Quality Award or other award you have received
- Explain what your residents mean to you and your team

2. Encourage CMS to do the following:

- Not to implement the rule at all – care is specific to each resident
- Adequately fund it
- Delay implementation until the workforce returns
- Phase in over 5 years for urban and rural
- Count LPNs
- Count other workers (PT, OT, recreation, respiratory, etc.)

Submit Comments by Nov. 6!

<https://www.votervoicenet.com/AHCA/Campaigns/103471/Respond>