

## THE STAFFING SAGA CONTINUES: CMS RELEASES FINAL RULE MANDATING NURSING HOME STAFF RATIOS

April 25, 2024

On April 22, 2024, the Centers for Medicare & Medicaid Services (“CMS”) released its final rule on Minimum Staffing Standards for Long-Term Care (“LTC”) Facilities and Medicaid Institutional Payment Transparency Reporting. These new standards aim to prioritize safety and health care quality in LTC facilities. However, many health care providers and institutions feel that these rules could exacerbate workforce shortages and potentially reduce LTC capacity in vulnerable markets. The following outlines key provisions adopted in this final rule:

### Minimum Nursing Staffing & RN On-Site Standards

- LTC facilities will be required to provide a minimum of 3.48 hours per resident day (“HPRD”), which must include at least 0.55 HPRD of direct care from a registered nurse (“RN”), 2.45 HPRD of direct nurse aide care, and direct care from any combination of RN, licensed practical nurse (“LPN”), licensed vocational nurse (“LVN”) or nurse aide for the remaining 0.48 HPRD.
- LTC facilities must have an RN on-site 24 hours a day, 7 days a week available to provide direct patient care.
- CMS is finalizing their proposal for hardship exemptions for qualifying facilities based on workforce availability and other factors. The final rule includes criteria for a temporary hardship exemption, including geographic staffing unavailability, financial commitment to staffing, and good faith efforts to hire. Prior to being considered for an exemption, LTC facilities must be surveyed for compliance with the LTC participation requirements. CMS will coordinate with state survey agencies for this effort.

### Facility Assessment Requirement

- LTC facilities are already required to conduct, document, and review a facility-wide assessment. The new rule strengthens the requirements around these assessments, requiring the following:
  - Facilities must use evidence-based methods when care planning for their residents, including consideration for those residents with behavioral health needs.
  - Facilities must use the facility assessment to assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in the resident population.

- Facilities must include the input of the nursing home leadership, management, direct care staff, and representatives of direct care staff as applicable. Facilities must also solicit and consider input from residents, resident representatives, and family members.
- Facilities must develop a staffing plan to maximize recruitment and retention consistent with what was described in the [President's April Executive Order](#) on Increasing Access to High-Quality Care and Supporting Caregivers.

### Implementation of New Requirements

- The timeline for implementation of these requirements will be staggered based on geographical location over a 3-year period for all non-rural facilities as follows:
  - Phase 1 – Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
  - Phase 2 – Within 2 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 3 years of the final rule publication, facilities must meet the 0.55 RN and 2.45 HPRD requirements.

### Medicaid Institutional Payment Transparency

In an effort to increase transparency related to compensation for workers, CMS is requiring states to collect and report on the percent of Medicaid payments spent on compensation for direct care workers, and support staff, delivering care in nursing facilities and intermediate care facilities for individuals with intellectual disabilities (“ICFs/IID”).

Highlights from this portion of the rule include:

- New reporting requirements for LTC and ICFs/IID regarding the percentage of Medicaid payments spent on compensation for direct care workers and support staff.
- Support for quality care and worker safety by excluding costs of travel, training, and personal protective equipment (“PPE”) from the calculation of percentage of Medicaid payments going toward compensation.
- An exemption for the Indian Health Service and Tribal health programs from the reporting requirements.
- Promotion of the public availability of Medicaid institutional payment information by requiring that both states and CMS make the reported information available on public-facing websites.

### What this Means for Providers

LTC facilities are encouraged to continue monitoring for updates related to the CMS staffing mandate. Whether the proposed staffing requirements actually go into effect as planned remains an open question, as both houses of the U.S. Congress have considered bills that would block these requirements from going into effect, and widespread opposition among providers, trade associations, and others could result in litigation that otherwise limits or delays implementation. Nonetheless, to the extent a facility is positioned to provide staffing consistent with CMS’s mandated ratios, this may be a preferred course, both in anticipation of potential mandated staffing requirements and to otherwise improve facility care quality.

If you have any questions or need further guidance regarding CMS's final rule on Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting, please contact a member of Hancock Daniel's [Long-Term Care & Post-Acute Care](#) team.

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