LONG TERM CARE
COMMUNITY COALITION
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The New Federal Nursing Home Staffing Standard: What You Need to Know

To help address persistent and widespread nursing home problems, the federal Centers for Medicare & Medicaid Services (CMS) issued a rule on April 22, 2024, requiring, for the first time, that nursing homes provide minimum numbers of nursing staff time per resident. This brief provides some essential points on the new rule which we believe will be useful to the public, policymakers, and the news media.

For more information and resources, including data on staffing levels for all U.S. nursing homes (in compliance with federal reporting requirements), visit https://nursinghome411.org/federal-staffing-standard/.

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Why is this rule being promulgated?

Since the passage of the 1987 Nursing Home Reform Law, nursing homes have been required to have sufficient staff to ensure that each of their residents receives the services that they need to attain and maintain their highest practicable physical, mental, and psycho-social well-being as individuals.

Unfortunately, due to lax enforcement, most facilities provide far less staffing than numerous studies have found is necessary just to meet basic clinical needs, no matter care with dignity. As a result, too many residents suffer unnecessarily every day. Thus, the purpose of the new rule is to add a *quantitative requirement* to reduce flouting of the *qualitative requirement* which has been in place for over 30 years.

What staff are we talking about and how is their time measured?

Care staff in a nursing home is comprised of registered nurses (RNs), licensed practical or vocational nurses (LPNs/LVNs), and certified nurse aides (CNAs). Facilities are required to employ sufficient numbers of care staff, with the appropriate competencies, to ensure that every resident is able to attain and maintain their highest practicable well-being. This determination is required to be based on a comprehensive resident assessment and a care plan that spells out how the facility is going to meet the needs, desires, and goals of each resident as an individual.

Since 2016, facilities have been required to report, on a quarterly basis, their RN, LPN/LVN, and CNA staffing levels for every day of the quarter based on auditable payroll records. These data became publicly available in 2017. CMS (the federal Centers for Medicare & Medicaid Services) publishes them at https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing. LTCCC compiles these data into user-friendly, searchable files, available at https://nursinghome411.org/data/staffing/.

What do I need to know about the rule?

1. **24/7 registered nurses (RNs)**. Currently, nursing homes are required to have a RN eight hours per day. RNs provide expertise – infection control planning and management, resident assessment and care planning, and the identification and treatment of chronic and acute conditions – to help ensure basic resident safety. Numerous studies have found that higher RN presence is associated with higher quality of care and fewer deficiencies. Conversely, when facilities cut back on RNs, residents are much more likely to suffer, including experiencing avoidable falls, pressure ulcers, and over-drugging with dangerous antipsychotics.
2. **Minimum nursing staff of 3.48 hours per resident per day (HPRD)**. Currently, there are no quantitative minimum staffing requirements and, as noted above, the "sufficient

staffing" requirement is not effectively enforced. The final rule calls for 3.48 HPRD, including at least .55 HPRD for RNs and 2.45 HPRD for CNAs.

What you need to know:

- *4.1 HPRD is the bare minimum needed for resident safety*. A landmark federal study released in 2001 found that at least 4.1 HPRD is needed just to meet residents' clinical needs. That study did *not* account for time needed to treat residents humanely or provide comfort care, which nursing homes promise – and are paid – to provide and which every resident deserves. [*See* "2001 Federal Report on Staffing Standards" available at https://nursinghome411.org/federal-staffing-standard/.]
- *Higher levels are needed now to ensure safety and appropriate care*. Resident acuity (needs) has increased since the 2001 study was conducted, due to more people being able to avoid or delay nursing home care by accessing services at home or in assisted living. Thus, in order to fulfill longstanding quality and safety standards, as well as President Biden's promise to ensure that residents are safe, a valid staffing standard should include a baseline requirement of at least 4.1 HPRD with additional requirements for residents that have higher needs (such as dementia care, bariatric care, etc.).
- *Safe staffing is achievable*. Approximately 25% of U.S. nursing homes persistently provide 4.1 HPRD or higher. However, in the absence of effective enforcement, too many operators know that they can flout this need with impunity, even when it results in unnecessary pain, humiliation, or avoidable death. As the nursing home sector has become more corporatized, reducing staffing has emerged as an increasingly appealing method to boost profits.

3. **Waivers and exceptions** in the rule put the profit interests of operators over the basic needs and dignity of residents.
4. **Delayed implementation** means that thousands of residents will continue to suffer unnecessarily.

For more information on these weaknesses, see the section below on how the rule will affect residents and communities.

If we know how much nursing staff is needed, why do so many facilities have less?

Though every nursing home promises – and is paid – to provide sufficient staffing, the failure to enforce this requirement enables facilities to use understaffing as a way to save money and increase profits. Our studies of federal data over the years indicate that violations of minimum health and safety standards are rarely cited at a level that is likely to result in any penalty. As a result, operators know that they can understaff with impunity, even when residents suffer pain and degradation.

For more information: https://nursinghome411.org/reports/survey-enforcement/survey-data-report/.

How will this rule affect America's nursing home residents, families, and communities?

1. **Strengths**.
    - *24/7 RN presence*. The 24/7 RN requirement will have a meaningful positive impact on the lives of many nursing home residents. Until now, the federal requirement has been a RN eight hours per day, with the other 16 hours of the day covered by either a LPN or RN. To save money, facilities have a strong incentive to use LPNs. However, the consistent presence of RNs is crucial, since they are typically the only staff in the facility with the ability to assess a resident's condition and oversee the care provided by LPNs and CNAs. Thus, the benefit of this requirement is that residents will finally have greater access to the 24-hour skilled nursing which, by definition, nursing homes are expected – and paid – to provide. Importantly, CMS is requiring that the RN be in the building, rather than just "available" at a foreign location.
2. **Weaknesses**.
    - *Low overall nursing requirement ignores the needs of residents and families*. For residents in the nursing homes that staff below the new minimum requirement, care will likely improve *when* the rule is implemented *and* if it is enforced. However, for the residents in the majority of facilities that currently staff above CMS's low requirement, the new rule could be disastrous. Those facilities will now be incentivized to decrease their staffing to the level that CMS has arbitrarily identified as adequate. Furthermore, the low standard will undermine both public (government) and private (family) lawsuits for serious abuse, neglect, and fraud, because it gives the government's imprimatur on a standard that is woefully inadequate to meet basic needs for most residents, no matter ensure life with dignity or, even, effective infection control practices.

    CMS has said that facilities will still be required to staff higher if their residents need more care, but history has shown that enforcement of this important standard is rare.

    For more information on longstanding staffing requirements, see https://nursinghome411.org/fact-sheet-requirements-for-nursing-home-care-staff-administration/.

    - *Slow implementation of the rule puts residents at risk*. CMS is providing years for facilities to come into compliance with the rule. This puts residents at continued risk of avoidable harm, humiliation, and death. Nursing homes have been required to have "sufficient staffing" for over 30 years. If facilities have

challenges staffing up to the new, low minimum requirement, they should be required to stop admitting new residents until they achieve the required ratios. Nursing homes are not supposed to operate as warehouses or factory farms for vulnerable humans.

- Exemptions will expose residents to abuse and neglect, while continuing to incentivize operators to game the system to maximize profits. Under the 1987 Nursing Home Reform Law, there are no exceptions as to who has a right to receive good care. By allowing a "hardship exemption" CMS is allowing facilities to inflict harm on vulnerable residents.
- *Weak enforcement mechanisms will greatly undermine the rule's effectiveness.* Given that CMS has required facilities to report their daily staffing since 2016, using those data to efficiently monitor for compliance with the new staffing standard would have been rational and effective. Instead, CMS chose to use its existing survey processes – widely recognized as weak and overburdened – to oversee compliance.

For more information on the weaknesses of nursing home enforcement, see https://nursinghome411.org/reports/survey-enforcement/survey-data-report/ and https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf.

Where is the money for nursing home staffing?

Myth: Nursing home payment is insufficient to hire more staff.
Reality: Most nursing homes are run for-profit and are seen as attractive investments by Private Equity, Real Estate Investment Trusts, and other sophisticated investors.

1. **Nursing home profits are high**. Several reports and peer-reviewed studies have found significant unreported profit-making in the nursing home sector, including:
    - *Tunneling and Hidden Profits in Health Care*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4762965.
        i. In 2019, 63% of nursing home industry profits flowed through related parties, meaning that reported profits only accounted for 37% of what the industry made overall.
        ii. Accounting for hidden profits increased the mean total profit per facility to $371K in 2019, which represents a 169% increase over the reported profit level for the year.
        iii. Most hidden profits are in inflated rents (30.9%), and management fees (25.4%), there are also profits on therapy and ancillary services (which are not Medicare allowable costs).
        iv. If these funds were spent on staffing, RN staffing HPRD would increase by about 29% and CNA staffing HPRD by 21%.

- *US Nursing Home Finances: Spending, Profitability and Capital Structure*, https://nursinghome411.org/alert-profit-study/.
    i. Nursing homes had total net revenues of $126 billion and a profit of $730 million (0.58%) in 2019.
    ii. However, when excluding $6.4 billion in disallowed costs and $3.9 billion in non-cash depreciation expenses, the average nursing home profit margin was 8.84 percent.
    iii. Overall spending for direct care was only 66% of net revenues, including 27% on nursing, in contrast to 34% spent on administration, capital, other, and profits.

2. **Costs of compliance are low**.
    - Nursing home industry lobbyists claim that providing 24/7 RN staffing would cost $610 million a year. However, LTCCC's analysis of federal staffing data and salary data (from the U.S. Department of Labor) indicates that the cost is, in fact, only $71 million per year. That's under $60 per day per facility. See https://nursinghome411.org/costs-24-hour-rn/.
    - A study on the costs of meeting 4.1 HPRD of nurse staffing found that the cost to nursing homes would be $7.25 billion per year. Though this sum sounds large, it amounts to only 4.2% of overall nursing home spending. That equals approximately $16 per resident per day. Given that CMS opted for a much lower, arbitrary standard of 3.48 HPRD, the costs will be significantly lower.
3. **Nursing homes are already paid to provide higher staffing levels than those in the federal rules**.
    - As noted earlier, nursing homes are paid and required to provide sufficient staffing to meet the clinical and psycho-social needs and goals of their residents.
    - Previous studies have found that 4.1 HPRD of nursing staff time is the minimum amount needed just to meet residents' clinical needs.
    - Thus, if a facility is providing less than 4.1 HPRD, that is a red flag for potential abuse, neglect, and fraud.
    - The new requirement of 3.48 HPRD is substantially below the minimum level that residents need just to survive safely, no matter with dignity.

How will nursing homes find more staff?

Myth. The nursing home industry, through multi-million dollar lobby associations, has argued that there are simply not enough people out there to meet *any* staffing standard. In fact, they have been making this same argument for decades, whenever the news media or policymakers uncover scandalous conditions due to inadequate staffing.

Reality. Too many nursing homes don't *retain* sufficient staff due to poor and dangerous working conditions and low pay. High turnover rates benefit operators who wish to keep staffing costs low, but they undermine safety and dignity for both residents and care staff.

1. **2009 Study**: "As far back as the mid 1970s studies have documented average turnover rates for registered nurses (RNs), licensed vocational nurses (LVNs) and certified nurses aides (CNAs) ranging between 55% and 75%. Rates have remained high throughout the decades, often exceeding 100% for CNAs, the most common type of care giver in nursing homes." Mukamel, Dana B et al. "The costs of turnover in nursing homes." *Medical care* vol. 47,10 (2009): 1039-45. https://doi.org/10.1097/MLR.0b013e3181a3cc6
2. **2021 Study:** "Mean and median annual turnover rates for total nursing staff were roughly 128 percent and 94 percent, respectively. Turnover rates were correlated with facility location, for-profit status, chain ownership, Medicaid patient census, and star ratings." Gandhi, Ashvin, Yu, Huizi, and Grabowski, David. "High Nursing Staff Turnover In Nursing Homes Offers Important Quality Information." *Health Affairs* vol. 40, No. 3 (2021). https://doi.org/10.1377/hlthaff.2020.00957

Where can I find staffing information for nursing homes in my community and state?

LTCCC provides a user-friendly, searchable database of the staffing levels for every U.S. nursing home (that is in compliance with federal reporting requirements) at https://nursinghome411.org/data/staffing/. This page includes downloadable data reports for every quarter since 2017 Q1, with information on individual facilities as well as state averages for total nursing, RN staffing, and use of contract staff. States are ranked and can be compared to one another on these measures. The page also includes an interactive map.