CMS's Minimum Staffing Requirements Membership Webinar

April 23, 2024

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Impossible Staffing Mandate

- No funding
- Required staff are simply not available
- No pipeline is being built to produce the number of RNs needed
  - Even if it were, RNs are in demand across all health care sectors

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Staffing Requirements

- Minimum 3.48 total nurse staff HPRD
  - Can include CNAs, RNs & LPNs
- Specific minimum 0.55 RN HPRD
- Specific minimum 2.45 CNA HPRD
- RN onsite 24/7
- DON now counts for 24/7 & 0.55 HPRD if available to provide direct resident care

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Implementation Timeframe

	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)

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24/7 RN Waiver/Exemption

- 2 options for 24/7 RN Requirement
  - Existing statutory RN waiver for rural, subject to annual review
  - New hardship exemption requires extensive criteria
    - Local workforce must be 20% below national average, good faith efforts to hire, demonstrated financial commitment
    - Excluded: SFF, no PBJ submission, or certain citations within past 12 months
    - Appears that facility cannot request, requires evaluation during survey
    - Exemption relieves 8 hours per 24
    - If no RN onsite must have immediate phone access
    - Exemption expires at next standard recertification survey
    - CMS believes 25% will meet

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HPRD Exemptions

- HPRD Requirements
  - Requires facility to be found noncompliant
  - Extensive eligibility and exclusion criteria
    - Local workforce must be 20% below national average, good faith efforts to hire, demonstrated financial commitment
    - Excluded: SFF, no PBJ submission, or certain citations within past 12 months
    - Appears that facility cannot request, requires evaluation during survey
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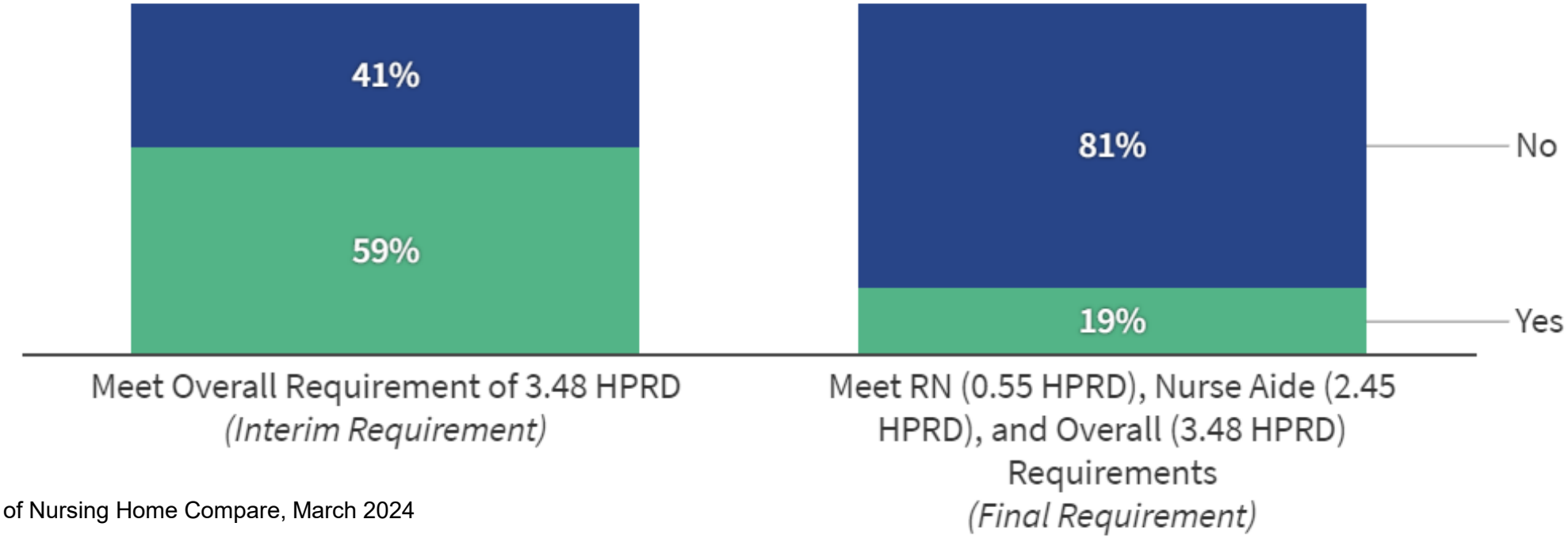
4 out of 5 SNFs Do Not Meet the HPRD

Figure 1

About 1 in 5 Nursing Facilities Currently Meet the Staffing Requirements in the Final Rule (When Fully Implemented)

59% of nursing facilities would meet the interim requirement of 3.48 hours per resident day (HPRD)



Source: KFF Analysis of Nursing Home Compare, March 2024

Facility Assessments

- Implementation date extended to 90 days vs. 60 days
- Added facility must solicit and consider input from residents and family
- Other changes per proposed rule including:
  - Consider staffing needs per unit and shift and adjust as needed
  - Use evidence-based data driven methods
  - Active involvement of specific staff including direct care staff & their representatives
  - Develop and maintain plan to maximize direct care staff recruitment and retention
  - Inform contingency plan for non-emergency events (availability of direct care nurse staffing or other resources needed for resident care)

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Compliance Assessment & Penalties

- Details not available now
- CMS will publish before implementation dates of each component
- CMS envisions using a combination of PBJ data and onsite surveys to assess compliance

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Medicaid Transparency Reporting

- States must report % of Medicaid payments spent on direct care and support staff
- Apply regardless of FFS or managed care system
- Consistent with HCBS requirements
- Implementation in 4 years

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Next Steps

Helpful Legislative Activity

- S. 3410/H.R. 7513 Protecting America's Seniors' Access to Care Act
  - Prohibits HHS Secretary from finalizing minimum staffing rule, establishes advisory panel on NH workforce
  - Passed out of W&M Committee with bipartisan vote
- S. 3841 VA Report on Proposed CMS Staffing Ratios Act
  - Requires VA to study risks to elderly vets of CMS changing staffing ratios; requires assessment of VA's ability to meet LTC needs of veterans
- Bipartisan Letters Against the Proposed Staffing Mandate

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Minimum Staffing Rule Additional Detail

Hardship Exemption – Proposed to Final

Proposed Rule	Final Rule
(1) *Location:* A LTC facility must either be located: a. In an area where the supply of the health care staff (RN, or NA, or both) is not sufficient to meet geographic area needs as evidenced by either a medium (20% below the national average) or low (40% below national average) provider-population ratio for nursing workforce or b. Twenty miles or more from the next closest LTC facility.	(1) 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 and Census Bureau data);
(2) Demonstrated *Good Faith Effort to Hire and Retain Staff*	(2) The facility makes a *Good Faith Effort to Hire and Retain Staff;*
(3) *Demonstrated Financial Commitment*	(3) The facility documents its *Financial Commitment* to staffing;
	(4) The facility posts its exemption status in a prominent, publicly viewable location; ***AND***
	(5) The facility informs each *current and prospective resident*, and the Office of the State Long-Term Care Ombudsman of its exemption status and the degree to which it is not in compliance with the HPRD requirements.

Hardship Exemption - Criteria

The following **three criteria** must be met for a facility to qualify for an exemption:

1. 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).
2. 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.
3. The facility documents its financial commitment to staffing.
   - Facilities will need to provide information on how much they expend on nurse staffing relative to revenue.

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Hardship Exemptions- Notifications

- The facility must post its exemption status in a prominent, publicly viewable location that is easy to understand, for all residents.
- The facility must inform each *current and prospective resident,*, along with the Office of the State Long-Term Care Ombudsman of its exemption status and the degree to which it is not in compliance with the HPRD requirements.
- The list of facilities that are granted an exemption from this rule and the extent to which they each do not fulfill the requirements will be posted on Care Compare.

- Note that exemptions remain in place only until the next standard survey.

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Exceptions to the Hardship Exemption

The following facilities are **not eligible to receive an exemption**:

(1) facilities that failed to submit PBJ data according to re-designated § 483.70(p);

(2) facilities that have Special Focus Facility (SFF) designation;

(3) facilities cited for widespread insufficient staffing with resultant resident actual harm **(I)** or a pattern of insufficient staffing with resultant resident actual harm **(H)**, as determined by CMS; or facilities cited at the "immediate jeopardy" level of severity with respect to insufficient staffing **(J,K,L)** in the 12 months preceding the survey where the facility's non-compliance is identified.

**specific S&S listed in bold above added per AHCA's current understanding of text*

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Facility Assessment Expansion

- The Facility Assessment will be relocated to a standalone section, § 483.71, as proposed.
- The Facility Assessment must consider:
  - Specific staffing needs for each resident unit in the facility and adjust as necessary based on changes to its resident population.
  - Specific staffing needs for each shift, such as day, evening, night, and adjust as necessary based on any changes to its resident population.
- The Facility Assessment must use evidence-based, data-driven methods when considering the care required by the resident population.
- Facility leadership must actively participate in the Facility Assessment, including, but not limited to, a member of the governing body, the medical director, an administrator, and the director of nursing; and, direct care staff, including but not limited to, RNs, LPNs/LVNs, NAs, and representatives of direct care staff, if applicable.
- **The facility must solicit and consider input received from residents, resident representatives, family members, and representatives of direct care staff.**

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Finance

- CMS estimates the total cost of the final rule at $43B over 10 years or about $4.3B per year.

- AHCA continues to estimate the cost above $6B per year. This is consistent with our review of the proposed rule.

- There are no provisions requiring Medicare, Medicaid, or other payors to increase payment rates to providers for any of the rule requirements.

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Finance

- CMS does not estimate how much of the costs would be passed on to payors or how they would be covered except that providers might choose to:

  (1) Reduce margin/profit; subject to current levels in a facility,

  (2) Reduce other operational costs; subject to current level of costs,

  (3) increase prices charged to payors; based on ability to negotiate.

- CMS expects that the costs for the rule will be shared by Medicaid (67%); Medicare (11%) and Other (22%).

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Finance

- CMS' estimates assume that RN and NA wages will grow annually at 2.31% due to increasing demand for direct care staff.

- CMS estimates assume a stable nursing home resident population will remain stable over the next 10 years.

- CMS quotes evidence that the resident population is declining which could lower cost estimates but acknowledges if patterns change and the nursing home population increases, that costs could be higher.

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Helpful Legislative Activity

Current Activity

- S. 3410/H.R. 7513 Protecting America's Seniors' Access to Care Act
  - Introduced in Senate by Sen. Tester & Sen. Fischer Article Letter
  - Introduced in House by Rep. Fischbach Article
  - Coalition Letter Urging Support For The Protecting Rural Seniors' Access To Care Act
  - Prohibits the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the nursing home workforce.
  - Passed out of W&M Committee with bipartisan vote.
- S. 3841 VA Report on Proposed CMS Staffing Ratios Act
  - Introduced in Senate by Sen. Angus King & Sen. Cramer Article Letter
  - Requires the VA to study the risks to elderly veterans of a proposed rule by the CMS that would unsustainably change staffing ratios at nursing homes. The bill requires an assessment of the VA's ability to continue meeting the long-term care (LTC) needs of veterans at VA and VA affiliated nursing homes, with a focus on rural areas, if the rule were to be implemented as currently proposed. It would require the Secretary of Veterans Affairs to submit a report on the VA's findings to Congress within 60 days of the bill becoming law.
- Bipartisan Letters Against the Proposed Staffing Mandate
  - January 2023: Led by Sen. Tester, Sen. Barrasso, Sen. Daines, & Sen. Hickenlooper Letter
  - June 2023: Led by Sen. Tester Letter
  - September 2023: Led by Sen. Tester & Sen. Lankford Letter
  - October 2023: Led by Rep. Pence, Rep. Guthrie, Rep. Buchanan, Rep. Fischbach, Rep. Golden, & Rep. Pappas Letter

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