

# CMS Proposal on Minimum Staffing Requirements

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## Overview

- Specific thresholds for RN and Nurse Aides would be created
- 24/7 RN
- Facility assessment requirement expanded



## Number of Hours Required

- RN: 0.55 HPRD
- Nurse Aide (NA): 2.45 HPRD
- No specific LPN requirement
- 24/7 RN
- If acuity needs of residents require more, higher RN and NA staffing level will also be required



## Alternate Approaches

- In addition to or in place of the 0.55 RN and 2.45 NA proposal, CMS is asking if either of the following should be considered:
  - Three-part:
    - 3.48 Total Nursing Staff HPRD
    - RN HPRD
    - NA HPRD
  - Four-part:
    - Total Nursing Staff HPRD
    - RN HPRD
    - NA HPRD
    - LPN HPRD



# What Workers Count

- 0.55 HPRD can only be met by RNs
  - DON can be counted
  - Unclear if RNs with administrative duties can be counted (though appear to be included in CMS calculations)
- 2.45 HPRD can only be met by Nurse Aides
  - CMS invites comments on allowing substitution with LPN in extraordinary cases and extreme circumstances
- CMS notes NASEM recommendation to exclude DON from counting in 24/7 and invites comments
- Cannot substitute RN or NA with PT, OT, Psychologist, Social Worker



## Where We Are Today

### Preliminary

- 49% do **not** meet 0.55 RN HPRD
- 72% do **not** meet 2.45 NA HPRD
- 19% meet both RN & NA HPRD
- Estimate <20% facilities have 24/7 RN hours
  - PBJ has per day, not shift-level data



# Hardship Exemption for HPRD Requirement

- Extensive criteria
- Process is cumbersome & not user-friendly
- Most in need unlikely to qualify

# Hardship Exemption for HPRD

## **Prior to being granted:**

- Must be surveyed to assess health and safety of residents and
- Cited as noncompliant with minimum staffing requirement and

## **Eligible:**

- Applicable workforce supply not sufficient per BLS; or no LTC facility within 20 miles of requesting facility and
- Good-faith effort to hire/retain including offers at prevailing wages or better (4-6 months or full year lookback) and
- Financial commitment demonstrated through documentation of financial resources expended annually on nurse staffing relative to revenue.

# Hardship Exemption for HPRD

## **Ineligible:**

- Fail to submit PBJ in accordance with 483.70(p) or
- Within the 12 months preceding survey during which the facility's noncompliance is identified - was cited at widespread or pattern of insufficient staffing resulting in resident harm or cited at IJ for insufficient staffing or
- Identified as SFF

## **Length of exemption:**

- One year and could be extended in increments of one additional year if facility continues to meet criteria
- Discontinued if facility becomes ineligible per criteria above

**Exemption will be publicly posted**



## Waiver for 24/7 RN

- Uses existing process for current RN 8 hour/7 day requirement



## Funding

- No funding for increased staff
- \$75 million for workforce development
- CMS estimates 10-year cost is \$40.6B
  - Average cost of \$4.1B annually



## Phase-in After Rule is Finalized

- **HPRD:**
  - Urban facilities - 3 years
  - Rural facilities – 5 years
- **24/7 RN:**
  - Urban facilities - 2 years
  - Rural facilities – 3 years
- **Facility assessment:**
  - 60 days



## U.S. Census Definition Used for Urban/Rural

- 21% of SNFs are rural: All population, housing, and territory not included within an urban area
- Facility's designation will be available in TrendTracker Topline report by September 8
- CMS seeking comment on whether a different definition should be used



# Am I Rural?

**Rural Health Information Hub: Am I Rural?**

<https://www.ruralhealthinfo.org/am-i-rural>

First definition listed is U.S. Census



# Penalties

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



# Facility Assessment Expansion

- Creates new regulatory section for facility assessment at §483.71 (separating from Administration)
- Requires facilities develop and maintain staffing plan to maximize recruitment & retention of nursing staff
- Address staffing for all shifts and days of week and adjust based on significant changes in resident population



## Facility Assessment Expansion (cont.)

- Require greater inclusion of direct care staff in development, including representatives of direct care employees (union, local safety organization, third-party worker advocacy group)
- Use evidence-based data driven methods that consider resident condition, linked to resident assessment
- Behavioral health issues and staff skill sets are emphasized
- Contingency plan for non-emergency events that have potential to affect resident care



## How We Are Going to Win

- Further moderate the rule
- Obtain relief from Congress
- Litigation if necessary



## Objective: Further Moderate Rule

- Funding
- Longer phase-in for 24/7 RN requirement
- More inclusive count of 24/7 RN hours (DON and nurses with administrative duties included)
- Ease the hardship exemption requirements
- Ensure that LPNs are acknowledged as a part of the solution



# Strategy

- Political Outreach
  - Engaging Congressional Leadership
  - Expanding Congressional Champions (Tester)
  - Engaging Governors on costs placed on states
  - Legislative proposals that fix problem (CHALLENGING)
- Grassroots – Proposed Rule Outreach
  - Formal Comments
    - 10,000 comments goal
  - Facility/Community Congressional Tours
    - 133 facility/community tours to date
  - Member Meetings



# Strategy

- Coalition Building
  - AHA, Rural Health, Homecare, LeadingAge
- Targeted media and public affairs investment
- Leveraging proposed rule to advance solutions
  - Lockout, TNA, immigration)
- Engaging Administration



# What You Can Do Now

- If you have relationship, contact your Members of Congress directly (time to use the cell phone #)
- District office meeting to discuss the issue
- Continue to invite Members of Congress to your facility
- Engage your local press about workforce shortages (OpEds, articles etc.)
- Lobby Wednesdays in DC
  - AHCA will coordinate mini fly-ins to engage Members of Congress



# We Need 10,000 Comments to CMS

- Contact CMS to weigh in on their proposal for SNF minimum staffing requirements
- Comments due November 6
- Make your comments personalized to drive home message
  - Use your own circumstances & examples
- Focus on your patients and residents



# Help Us Contact CMS

## **JOIN OUR WEBINAR:**

### Contacting CMS on Minimum Staffing Requirements

Monday, September 11  
2:00 PM Eastern

Register on ahcancalED or [click here](https://tinyurl.com/5n82n4cb)  
<https://tinyurl.com/5n82n4cb>

# Questions?

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**Submit through chat**

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