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Unpacking the New Mandatory Nursing Home Staffing Requirements

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Session CPE Requirements

- You need to attend 50 minutes to receive the full 1 CPE credit.
 - There will be 4 knowledge checks throughout the presentation. You must respond to a minimum of 3 to receive the full 1 CPE credit.

****Both requirements must be met to receive CPE credit****



Learning Objectives



List four specific staffing requirements



Discuss new required facility assessment enhancements



Identify timeframes various provisions take effect



Identify hardship exemptions that may be available



Agenda

- Recap
- New Requirements
- CLA Analysis
- Next Steps
- Bonus Content!



How Did We Get Here?

- Biden Administration priority
 - [Executive Order](#) on improving care
 - Concerns with conditions in nursing homes (especially during pandemic)
 - Private equity and for-profit ownership (perception that funding pulled away from direct patient care towards profits)
 - Quality/safety of nursing home residents
- CMS commissioned report from Abt Associates
 - Report released in August 2023
- CMS released proposed rule in Sept. 2023
- CMS finalizes rule in April 2024



Poll Question 1

Which of the following are included in the final nursing home staffing rule?

- A. Four distinct staffing requirements
- B. Enhanced facility assessments
- C. Hardship exemption
- D. All of the above





Abt Associates Report Recap



Abt Associates – Staffing Report

- Biden Administration contracted with Abt to study issue
- Abt did the earlier 2001 study with the 4.1 hours per resident day
- 2022 report done over six months (during COVID)
 - Used a mixed-methods approach – literature review, interviews/site visits, qualitative and quantitative analysis
 - Looked at quality/safety outcomes and feasibility/costs across a range of minimum nurse staffing (registered nurse, RNs, licensed practical/vocational nurse, LPNs, and nurse aide) requirement options
 - The report stated its purpose is “to promote quality and safe care for more than 1.1 million nursing home residents nationwide.”



Abt Associates – Staffing Report

- Overall, the report highlights:
 - Positive relationship between nursing home staffing & quality outcomes
 - Reduced → pressure ulcers, emergency department visits, rehospitalizations, and outbreaks and deaths related to COVID-19
 - Substantial reductions in delayed or omitted clinical care
 - No clear evidence basis for setting a specific minimum staffing level
 - “Multivariate models show that quality and safety, as measured using claims, resident assessments, and health inspection data, increase with staffing levels, with no obvious plateau at which quality and safety are maximized or ‘cliff’ below which quality and safety steeply decline.”



Abt Associates – Staffing Report

- With respect to specific staffing disciplines, the report found:
 - RNs – quality and safety consistently increased when RN staffing levels increased
 - LPNs – there was no consistent relationship of quality and safety with LPN staffing, but the report found a negative correlation between LPNs than RNs. In other words, when there are more LPNs, there are fewer RNs
 - Nurse aides – quality and safety only increase at the highest levels of nurse aide staffing
- Based on four staffing scenarios (between 3.3 – 3.88 HPRD) and varying criteria, the financial cost ranged between \$1.5 B and \$6.8 B

Bottomline:

1. Staffing mandates have positive correlation with quality/safety, but study found no plateau/cliff where those are improved/decreased with a specific staffing level
2. Report did not recommend any specific staffing level
3. Report did not use the 2001 number of 4.1 HPRD in any of its potential scenarios





CMS Proposed Rule Recap



CMS Releases Proposed Staffing Rule

Proposed rule includes multiple staffing policies

1. Requiring minimum RN hours per resident day = 0.55
2. Requiring minimum nurse aides HPRD = 2.45
3. Requiring RN always (24/7) on site and able to provide care

No requirements at all on LPNs

CMS asked for comments on total nursing hours



HPRD Exemption

HPRD Hardship Exemption

Must satisfy **all**:

- Be in a geographical area with insufficient nursing workforce
- Be located at least 20 miles from another nursing home
- Make good faith efforts to hire and retain staff
- Have financial commitment to staffing
- Be surveyed to assess health and safety of residents

Ineligible with any of following:

- Failing to submit Payroll-Based Journal data
- On the special focus facility list
- Identified with widespread insufficient staffing in past 12 months resulting in actual harm or a pattern of insufficient staffing resulting in actual harm or cited with immediate jeopardy for insufficient staffing



Facility Assessment Enhancements

- “Evidence-based methods must be used when care planning for residents”
- “Require use of facility assessments to assess specific needs of each resident and adjust as necessary based on any significant changes in resident population”
- “Require input of staff including leadership, management, direct care (nurse staff) representatives of direct care and staff who provide other services”
- “Require development of a staffing plan to maximize recruitment and retention of staff”



Implementation Phase In

Urban/Metro (non-rural) Areas

- Phase 1: 60 days to comply with facility assessment requirements
- Phase 2: two years to meet the 24/7 RN on site requirement
- Phase 3: three years to meet the 0.55 RN and 2.45 NA HPRD requirements

Rural Areas

- Phase 1: 60 days to comply with facility assessment requirement
- Phase 2: three years to meet the 24/7 RN on site requirement
- Phase 3: five years to meet the 0.55 RN and 2.45 NA HPRD requirements





CMS Final Staffing Rule



Finalized Staffing Requirements

New

3.48

Total
HPRD

2.45

Nurse
Aide
HPRD

0.55

RN
HPRD

24/7

RN on
site

HPRD = Hours Per Resident Day



More Details on the Staff Requirements

3.48 Total HPRD

- Minimum required irrespective of case mix
- 2.45 NA HPRD, 0.55 HPRD qualify but another 0.48 HPRD still needed (RN, NA, LVN/LPN)

2.45 Nurse Aide HPRD

- Minimum required irrespective of case mix

0.55 RN HPRD

- Minimum required irrespective of case mix

24/7 RN on site

- On site always
- Able to provide care
- DON is allowable (if able to provide care)



One Note on Compliance

CMS specifically states:

“Compliance with minimum total nurse staffing hours per resident day as set forth in one or more of the hours per resident day requirements ... should not be construed as approval for a facility to staff only to these numerical standards. Facilities must ensure there are a sufficient number of staff with the appropriate competencies and skills sets necessary to assure resident safety and to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments, acuity and diagnoses of the facility's resident population in accordance with the facility assessment”



HRPD, 24/7 (8 hours) Hardship Exemptions

Must satisfy all criteria:

CMS survey finds noncompliance with staffing requirements

Facility is making a good faith effort to hire and retain staff

Facility provides documentation of financial commitment to staffing

Workforce is unavailable as measured by having a nursing workforce per labor category that is a minimum of 20% below the national average for the applicable nurse staffing type (calculated by CMS using BLS/Census data)



HRPD, 24/7 (8 hours) Hardship Exemptions cont.

- ✓ Facility posts notice of exemption status in prominent, publicly viewable location in each facility
- ✓ Facility provides individual notice of exemption status to a variety of individuals current/prospective resident

- ✓ Facility sends copy of notice to representative of Office of State Long-Term Care Ombudsman
- ✓ Exemption stays in place until next survey (may be revoked)
- ✓ For HPRD, exemption could be for one, two or all three requirements



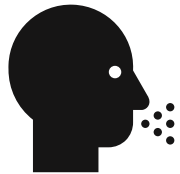
Exemptions: Ineligible with ANY of the following



Failing to submit Payroll-Based Journal data

SFF

On the special focus facility list



Identified with widespread insufficient staffing in past 12 months resulting in actual harm or a pattern of insufficient staffing resulting in actual harm or cited with immediate jeopardy for insufficient staffing

Poll Question 2

Which of the following is NOT required of nursing homes?

- A. 3.48 total hours per resident day
- B. 0.55 RN hours per resident day
- C. 2.0 LPN/LVN hours per resident day
- D. 24/7 RN on site



Facility Assessment Enhancements

“Must use evidence-based methods when care planning for ... residents, including consideration for those residents with behavioral health needs.”

“Required to develop a staffing plan to maximize recruitment and retention of staff”

“Must include the input of the nursing home leadership, including but not limited to, a member of the governing body and the medical director; management, including but not limited to, an administrator and the director of nursing; and direct care staff, including but not limited to, RNs, LPNs/LVNs, and NAs, and representatives of direct care staff as applicable.”

“Must use the facility assessment to assess specific needs of each resident and adjust as necessary based on any significant changes in resident population”

“The LTC facility must also solicit and consider input received from residents, resident representatives, and family members.”



Facility Assessments – Additional Inputs



Implementation Phase In

Non-Rural Areas

- Phase 1: 90 days to comply with facility assessment requirements
- Phase 2: two years to meet the 3.48 HPRD and 24/7 RN on site requirement
- Phase 3: three years to meet the 0.55 RN and 2.45 NA HPRD requirements

Rural Areas*

- Phase 1: 90 days to comply with facility assessment requirement
- Phase 2: three years to meet 3.48 HPRD and 24/7 RN on site requirement
- Phase 3: five years to meet the 0.55 RN and 2.45 NA HPRD requirements

*uses OMB definition/delineations



Definition of Rural

CMS finalizes using Office of Management & Budget (OMB) delineations

OMB designates counties as Metropolitan (metro), Micropolitan (micro), or Neither.

A Metro area contains a core urban area of 50,000 or more population. A Micro area contains an urban core of at least 10,000 (but less than 50,000) population.

All counties that are not part of a Metropolitan Statistical Area (MSA) are considered rural.

This means that Micro and Neither are considered “rural” for the final rules’ implementation requirements.



Recap

PROPOSED RULE REQUIREMENTS	FINAL RULE REQUIREMENTS
No provision	3.48 total nursing Hours Per Resident Day (HPRD)
2.45 Nurse Aide HPRD	Same
0.55 RN HPRD	Same
RN on site 24/7	Same
Required Facility assessments	Required, some revisions
Phase-in timeframes	Largely the same, rural definition revised, facility assessments required in 90 days (not 60 as originally proposed) after rule publication
Hardship Exemptions	Some revisions, waivers added for new policies (24/7 waiver for 8-hours and 3.48 HRRD total)



Poll Question 3

How well do you understand the facility assessment requirements?

A. Very confident

B. Somewhat confident

C. I need help!





Impact Analysis



CMS Impact Analysis

CMS estimates these requirements would cost nursing homes:

Year 1	= \$53 million
Year 2	= \$1.43 billion
Year 3	= \$4.4 billion
Year 10	= \$5.8 billion
10-year	= \$43 billion



CLA Analysis Data and Methodology

Hours and census

PBJ data from last quarter of 2023

Total hours, employed and contract, were utilized

Classification consistent with CMS Nursing Home Five-Star Quality Rating System Technical Users' Guide

- RN includes DON, RN with administrative duties, and RN
- Nurse aide includes CNA, aides in training, and medication aides / technicians
- Care Compare data from last quarter of 2023

Action description	Total facilities
Annualized one quarter for each provider included to produce average annualized hours. Thus, each provider was only included once.	14,860
Removed facilities that did not report hours per resident day. A total of 405 facilities were removed.	14,455
Final facility count	14,455

Hourly rates

Annual Medicare cost reports released by CMS as of April 2024

- Includes fiscal years ended between December 31, 2022, and December 31, 2023
- S-3, Part V, column 5 Median Hourly Wage (includes salaries and allocated benefits)
- Employed and contract median hourly rates were utilized
- State median hourly wages were used for facilities missing cost report data (approximately 6%)
- RN and LPN hourly wage rates utilized in median were capped at \$150 per hour; Nurse aides were capped at \$55 per hour



CLA Estimated National Impact

Requirement	Estimated Annual Cost (\$ in millions)	Estimated FTE's
Nurse Aide Hours per Resident Day of 2.45	\$ 3,526	77,366
RN 24/7 + RN Hours per Resident Day of 0.55	\$ 2,169	23,395
Total Hours per Resident Day of 3.48	\$ 61	783
Total	\$ 5,756	101,544



CLA Analysis Example: State Impact (Primarily Urban)

Nurse Aide HPPD of 2.45	Registered Nurse 24/7	Registered Nurse HPPD of 0.55	Total HPPD of 3.48
State Median	State Median	State Median	State Median
Reported Qtr. HPPD 2.06	Pct. of days met in Qtr. 95%	Reported Qtr. HPPD 0.60	Reported Qtr. HPPD 3.64
Estimated Annual Total Cost to Meet Proposed Mandate \$167M			



CLA Analysis Example: State Impact (Primarily Rural)

Nurse Aide HPPD of 2.45	Registered Nurse 24/7	Registered Nurse HPPD of 0.55	Total HPPD of 3.48
State Median	State Median	State Median	State Median
Reported Qtr. HPPD 1.88	Pct. of days met in Qtr. 49%	Reported Qtr. HPPD 0.33	Reported Qtr. HPPD 3.19
Estimated Annual Total Cost to Meet Proposed Mandate \$629M			





Next Steps



What Can You Do Next?

Understand Final Regulation Requirements

- Final [regulation](#)
- CMS [Fact Sheet](#)
- CLA's summary [blog](#)

Immediately Work to Initiate Facility Assessment

- Due within **90 days** of the rule being published
- Scheduled to be published on May 10, 2024
- Therefore, due August 8, 2024 due date
- Required for **all** facilities

Assess Gaps to Compliance

- Undertake gap analysis for all four staffing requirements
- Revisit recruitment, retention plans
- Develop staffing plan



What Can You Do Next?

Strategic Plan

- Assess your existing strategic and long-term planning
- Revise as necessary

Operational Assessment

- Review current staffing needs based on resident needs
- Determine impact of agency nursing on finance and admission decisions

Do Not Wait

- Begin the process of working towards compliance
- Even if there are years to implantation (and/or lawsuits), compliance will take time

CLA can assist. Reach out today.





Bonus Content!

Proposed 2025 SNF Rule



2025 Proposed SNF Rule

- Published on April 3
- Comments due May 28
- Proposed rule available at:
 - Federal Register :: Medicare Program; FY 2025 SNF
- CLA summary available at:
 - CMS Proposes 4.1% SNF Increase



Payment Updates

- CMS proposes a 2.8% market basket update plus 1.7% due to a forecast adjustment, resulting in 4.5%
 - For FY 2023, the forecasted increase in the SNF market basket was 3.9%, whereas the actual increase for FY 2023 was 5.6% — resulting in the actual increase being 1.7% points higher than estimated
- The 4.5% update is then reduced by the required 0.4% productivity adjustment
- **Net proposed update for 2025 = 4.1%**, an estimated increase of \$1.3 billion in aggregate Medicare Part A payments
- Of note: CMS proposes using new OMB delineations which may impact area wage index



Value-Based Purchasing Program

- Nursing Staff Turnover, SNF Healthcare-Associated Infection, and Total Nurse Staffing (total HPRD) measures will be scored beginning in FY 2026
- Three measures from FY 2024 plus FY 2023 Discharge to Community-Post Acute Care (DTC PAC) SNF measure will be scored beginning FY 2027
- CMS proposes to apply the measure minimum finalized for FY 2027 to FY 2028 SNFs would be required to report minimum number of cases for 4/8 measures. Failure to meet this would exclude SNF from the applicable program year and result in receiving adjusted federal per-diem rate



VBP Measures, Timeline

TABLE 30—SNF VBP PROGRAM MEASURES AND TIMELINE FOR INCLUSION IN THE PROGRAM

Measure	FY 2025 program year	FY 2026 program year	FY 2027 program year	FY 2028 program year
Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM)	Included	Included	Included.	
Skilled Nursing Facility Healthcare Associated Infections Requiring Hospitalization (SNF HAI) measure.	Included	Included	Included.
Total Nursing Hours per Resident Day (Total Nurse Staffing) measure	Included	Included	Included.
Total Nursing Staff Turnover (Nursing Staff Turnover) measure	Included	Included	Included.
Discharge to Community—Post-Acute Care Measure for Skilled Nursing Facilities (DTC PAC SNF measure).	Included	Included.
Percent of Residents Experiencing One or More Falls with Major Injury (Long-Stay) (Falls with Major Injury (Long-Stay)) measure.	Included	Included.
Discharge Function Score for SNFs (DC Function Measure)	Included	Included.
Number of Hospitalizations per 1,000 Long Stay Resident Days (Long Stay Hospitalization) measure.	Included	Included.
Skilled Nursing Facility Within-Stay Potentially Preventable Readmissions (SNF WS PPR) measure.	Included.

[2024-06812.pdf \(govinfo.gov\)](#)



Quality

- Validation. CMS proposes requiring SNFs to participate in a validation process applying to data submitted using the MDS and SNF Medicare fee-for-service claims as a SNF QRP requirement beginning with the FY 2027 SNF QRP
- This validation process would align with the SNF VBP process adopted in FY 2024 final rule
- No new measures proposed for the Quality Reporting Program.
- Standardized patient assessment data collected, CMS proposes to require SNFs to collect and submit — through the MDS — four new items and to modify one
 - Four new items proposed are one item for living situation, two items for food, and one item for utilities. The collection of these items would begin with the FY 2027 SNF QRP
 - Modified one is to the current transportation item in the MDS to align it with a transportation item collected on the AHC HRSN Screening Tool



Civil Monetary Penalties (CMP)

- CMS proposes to define “instance” or “instance of noncompliance” as a separate factual and temporal occurrence when a facility fails to meet a participation requirement and proposes that each instance of noncompliance would be sufficient to constitute a deficiency and a deficiency may be comprised of multiple instances of noncompliance
- Doing so allows CMS and the states to impose multiple per instance (PI) CMPs for the same type of noncompliance in a survey
- CMS proposes for each instance of noncompliance, CMS and the state may impose a per day CMP of \$3,050 to \$10,000, a PI CMP of \$1,000 to \$10,000, or both



Thank You!

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