

Nursing Homes May Face First-Ever Federal Staffing Mandate

Article

Amundsen Davis Health Care Alert

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On September 1st the Centers for Medicare & Medicaid Services (CMS) announced a proposed rule that would require nursing homes that participate in Medicare and Medicaid to comply with a first-ever federal staffing mandate. If adopted, the requirements would be phased in over two to five years. The comment period for the proposed rule closes November 6.

Under the rule, nursing homes would have to provide at least 3.0 nursing hours per resident day, including at least 0.55 RN hours and at least 2.45 nurse aide hours. Higher staffing levels would be required to meet residents' higher acuity needs. In addition, an RN would have to be on site 24 hours a day, every day. Current rules require RNs 8 hours a day while LPNs can cover the other 16 hours.

CMS said the new standards would promote better health outcomes, but nursing home leaders – already facing staff shortages – said they would not be able to find workers to meet the increased requirements. The proposed rule does not include any direct funding for hiring staff, but CMS would provide \$75 million in financial incentives such as scholarships and tuition reimbursement.

CMS acknowledged that more than 75% of nursing homes in the U.S. would have to increase staff to meet the mandate, which is higher than those of nearly all states. The current state requirements in Illinois, Wisconsin, Indiana, Missouri and Ohio are:

- Illinois – 3.8 hours per day, including 25% by licensed nurses. The total hours must also include 10% by RNs. Ill. Admin. Code Title 77, Public Health, § 300.1230(c) and (d).
- Wisconsin – 2.5 hours per day, including 0.5 hours by RN or LPN. Wis. Stat. § 50.04(2)(d)2.
- Indiana – No minimum daily requirement for total direct care, but nursing homes must provide 0.5 licensed nurse hour per resident day averaged over a one-week period and "sufficient nursing staff" to provide the services necessary to attain or maintain each resident's highest practicable physical, mental, and psychosocial well-being. 410 Ind. Admin. Code 16.2-3.1-17(a), (b) and (f).

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- Missouri – No minimum daily requirement, but nursing homes maintain “sufficient numbers” of nursing personnel with “sufficient qualifications,” including an RN on day shift and either an RN or LPN on evening and night shifts. When only an LPN is on duty, an RN must be on call. 19 CSR 30-85.042 (35) and (37). Fire safety regulations provide other personnel requirements. See 19 CSR 30-85.022 (41).
- Ohio – 2.5 hours per day. Ohio Admin. Code 3701-17-08(C).

The 24-hour RN rule would take effect two years after publication of the final rule (three years for rural areas). The hourly 0.55 RN and 2.45 aide requirements would take effect three years after the final rule (five years for rural areas). Exemptions would be available “only in limited circumstances,” including unavailable workforce, a good faith effort to hire and retain staff, and compliance with certain other requirements.

CMS estimated the cost of the staffing rules at \$32 million in year one, \$246 million in year two and \$4 billion in year three. The facilities would bear those costs unless payors increase rates.

CMS would enforce the minimums through its existing survey program and display compliance on the Care Compare website. Nursing home employers seeking guidance regarding the proposed requirements should seek advice from trusted counsel.

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