

# CMS's Final Minimum Staffing Standard for Nursing Homes to Go into Effect on June 21

## Labor & Employment Law Update

By Suzannah Wilson Overholt on May 13, 2024

On April 22, 2024, the Centers for Medicare & Medicaid Services (CMS) finalized minimum staffing requirements for nursing homes that participate in Medicare and Medicaid. As we noted previously, the rule was announced on September 1, 2023 and was open for public comment until November 6, 2023. The rule was officially published on May 10, 2024. Although the rule becomes effective on June 21, 2024, implementation is phased in over the next five years.

The final rule requires nursing homes participating in Medicare and Medicaid to comply with the following staffing standards:

- Provide residents with a minimum total of 3.48 hours of nursing care per day, which includes at least 0.55 hours of care from an RN per resident per day, and 2.45 hours of care from a nurse aide per resident per day. Facilities may use any combination of nurse staff (RN, LPN and licensed vocational nurse, or nurse aide) to account for the additional 0.48 hours per resident day needed to comply with the total nurse staffing standard.
- Have an RN on site 24 hours per day, seven days per week. This can be the Director of Nursing. However, they must be available to provide direct resident care.
- Develop a staffing plan to maximize recruitment and retention.

The rule implements the staffing requirements on a staggered timeframe based on whether the facility is rural or not. The implementation timeline is as follows:

### **Standard**

#### **Non-rural Facility**

#### **Rural Facility**

3.48 hours of care per day total nurse staffing

May 11, 2026 (two years)

May 10, 2027 (three years)

24/7 RN

May 11, 2026 (two years)

May 10, 2027 (three years)

0.55 RN and 2.45 nurse aide hours of care per day

May 10, 2027 (three years)

May 10, 2029 (five years)

Nursing homes may qualify for a temporary hardship exemption from the minimum nurse staffing standards and the 24/7 RN requirement if they meet certain criterion for geographic staffing unavailability, financial commitment to staffing, and good faith efforts to hire.

In addition to the staffing requirements, by **August 8, 2024**, facilities must conduct a facility assessment to improve the planning and identification of the resources and supports that are needed to care for residents based on their acuity.

The rule also requires states to collect and report on the percent of Medicaid payments that are spent on compensation for direct care workers and support staff delivering care in nursing facilities and intermediate care facilities for individuals with intellectual disabilities. CMS will publicly report that data reported, and states will be required to report it for each facility on a state-operated website. This requirement goes into effect on June 21, 2028.

Affected facilities should contact legal counsel if they have questions about the rule's requirements.

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