Minimum Staffing Standards for Long-Term Care Facilities Final Rule

On April 22, the Centers for Medicare and Medicaid Services (CMS) released its final Minimum Staffing Standards for Long-Term Care Facilities rule. The final rule is largely unchanged from the proposed rule. For reference, find NRHA's comment on the proposed rule here and CMS' fact sheet here. Please see below for a summary of major provisions. If you have any questions, please contact Alexa McKinley (amckinley@ruralhealth.us).

NRHA statement:

The National Rural Health Association (NRHA) is deeply disappointed by CMS' decision to finalize a one-size-fits-all rule for long-term care staffing. NRHA appreciates and concurs with CMS' commitment to improving resident safety in nursing homes but is extremely concerned about the consequences of this rule on rural beneficiary access to care. Rural facilities are facing historic nursing shortages, inflation, and inadequate reimbursement, leading to a wave of rural facility closures. A blanket, unfunded staffing mandate will threaten the viability of rural nursing homes and further jeopardize access to post-acute care for rural residents.

This rule comes at a time when over 200,000 more long-term care workers are needed to meet pre-pandemic levels, rural areas are projected to have a higher shortage of RNs compared to urban, and almost 500 rural nursing homes have closed their doors. A lack of post-acute care beds has ripple effects on an already strained rural health care delivery system. When rural hospitals are unable to discharge patients to the appropriate setting, older adults cannot get the care that they need, and hospitals must cover their extended stays. Minimum staffing levels will debilitate rural nursing homes and intensify placement challenges, putting patient safety and access to care at risk in rural communities. NRHA pledges to continue to work with Congress and the Administration on alternatives to ensuring residents' safety and health without compromising the rural nursing home sector.

Major provisions include:

Minimum staffing standards. CMS is finalizing a higher than proposed **total nurse staffing standard of 3.48 hours per resident day (HPRD), which must include 0.55 HPRD for registered nurse (RN) care and 2.45 HPRD of nurse aide care.** HPRD is the total number of hours worked by each type of staff divided by the total number of residents. Facilities can use a combination of any nurse staff (RNs, licensed practical nurses (LPNs), or nurse aides) to account for the additional 0.48 HPRD needed to meet 3.48 HPRD. CMS notes that depending upon resident case-mix and acuity, facilities may need a higher staffing level to meet residents' needs.

In addition, **all facilities must have an RN onsite 24/7.** Currently, facilities require an RN onsite 8 consecutive hours a day, 7 days a week. The director of nursing may meet the 24/7 requirement if they are available to provide direct resident care. There is an existing process for a waiver of the requirement to provide RN services for more than 40 hours a week at 42 C.F.R. § 483.35(f). CMS will allow facilities to use this mechanism to receive a waiver of the 24/7 requirement as well.

Facilities may receive a hardship exemption until the next standard recertification survey from the HPRD ratios and 24/7 RN requirements if they meet all of the following:

- The facility is in an area where the supply of RNs, nurse aides, or total nurse staff is a minimum of 20% below the national average;

- The facility demonstrates that it has been unable to recruit and retain appropriate personnel despite diligent efforts (including offering at least prevailing wages). This information would be verified through documented job vacancies, data on average wages in the Metropolitan Statistical Area where the facility is located, and the facility's staffing plan.
- The facility demonstrates the amount of financial resources expended on nurse staffing relative to revenue;
- The facility discloses its hardship exemption to the public;
- The facility must not be a Special Focus Facility, have been cited for having widespread insufficient staffing with resultant resident arm; have failed to submit Payroll Based Journal data.

CMS adds that when the RN onsite requirements are waived, an RN, nurse practitioner, physician assistant, or physician must be available to respond immediately to phone calls from the facility.

Rural facilities must meet the HPRD ratios by May 10, 2028, and non-rural facilities by May 10, 2027. Rural facilities must meet the 24/7 RN standard by May 10, 2027, and non-rural facilities by May 10, 2026. CMS initially proposed defining rural as an area with a population of less than 5,000 according to the Census definition. Due to NRHA's advocacy, CMS is now using the Office of Management and Budget (OMB) definition, meaning that facilities outside of a Metropolitan Statistical Area (MSA) are considered rural. This is a more expansive definition than the one proposed and will benefit more rural facilities.

Staffing information. Facilities must post, on a daily basis, the following information pertaining to nurse staffing:

- Facility name
- Current date
- Total number and actual hours worked by the following staff directly responsible for resident care per shift:
    - Registered nurses
    - License practical/vocational nurses
    - Certified nurse aides
- Resident census

Facility assessment. Facilities must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents during day-to-day operations and emergencies. This must be reviewed and updated at least annually. The following items must be addressed in the assessment:

- The facility's resident population, including number of residents and resident capacity;
- Care required by the resident population, considering the types of diseases, conditions, physical and behavioral health needs, cognitive disabilities, ad overall acuity;
- Staff competencies and skill sets necessary to provide the level and types of care needed by the resident population;
- The physical environment, equipment, services, and other physical plant considerations necessary to care for this population;
- An ethnic, cultural, or religious factors that may potentially affect care.
- The facility's resources, including all buildings, vehicles, medical and non-medical equipment;

- Services provided, such as physical therapy, pharmacy, behavioral health;
- All personnel, volunteers, and their education and/or training;
- Contracts, MOUs, or other agreements with third parties;
- Health information technology resources;
- A facility-based and community-based risk assessment

The facility assessment must be used to inform staffing decision, consider specific staffing needs for each resident, and consider staffing needs for each shift. All facilities must comply with this section by August 8, 2024.