



Helpful Tips for Submitting Comments on the Proposed Minimum Staffing Rule

Where do I submit comments to and when are they due?

Comments must be received by CMS by **Monday November 6, 2023** with reference file code **CMS-3442-P**. You can submit comments at www.regulations.gov by searching for CMS-3442-P and clicking “Comment” or by mailing to:

By regular mail:

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-3442-P
P.O. Box 8016
Baltimore, MD 21244-8016

By express or overnight mail:

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-3442-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

What does the proposed rule state?

- ⇒ The first implementation date will be effective 60 days after publication of a final rule. This includes expansion of the current regulation related to the Facility Assessment. The proposed rule will expand the staffing aspect of the rule, including a requirement that nursing homes must address staffing needs by using evidence-based and data-driven methods, such current case mix index, resident acuity, and services provided. In addition, nursing homes would be required to develop recruitment and retention plans as well as a contingency staffing plan which will be used when staffing levels are not meeting the minimum thresholds, but are not at an emergency staffing level.
- ⇒ The second implementation date will be effective 2 years for urban providers and 3 years for rural providers from publication of a final rule. The second implementation aspect will be a requirement to staff an RN 24 hours per day, 7 days per week. The proposed rule includes the Director of Nursing in the 24/7 requirement. This rule would replace the current requirement of staffing an RN for 8 consecutive hours, 7 days per week.
- ⇒ The third implementation date will be effective 3 years for urban providers and 5 years for rural providers from publication of a final rule. The third implementation aspect will be a requirement to maintain a minimum of 0.55 hours per resident day (HPRD) of RN coverage and 2.45 HPRD of nurse aide coverage.
- ⇒ In addition, the proposed rule states that Medicaid agencies will be required to publicly report the percentage of Medicaid payments spent on compensation of direct care and support staff for nursing homes and providers for individuals with development delays.

Are there exemptions or waivers?

Yes, the waiver process for RN coverage (24/7) would remain the same regarding F727 (8 consecutive hours /7days per week). However, a new exemption process would be used for the HPRD standards. Only providers meeting specific criteria would be considered:

- ⇒ Workforce is unavailable, or the provider is at least 20 miles from another long-term care provider as determined by CMS.
- ⇒ The provider is making a good faith effort to hire and retain staff.
- ⇒ The provider provides documentation of the financial commitment to staffing.
- ⇒ The provider does not meet any of the following:
 - ◇ Failed to submit PBJ data.
 - ◇ Is a Special Focus Facility (SFF)
 - ◇ Has been cited for F725 (Insufficient Staffing) under an H or I scope and severity (actual harm) and has not received an immediate jeopardy in the last 12 months under F725 (Insufficient Staffing).

Is CMS seeking specific feedback or should we only comment on specific requirements?

CMS is seeking feedback on several things that can be addressed in your comments. These questions include:

- ⇒ Should the Director of Nursing's hours be considered when meeting the 24/7 RN requirement?
- ⇒ What are the benefits and trade-offs associated with a two-part minimum nurse staffing standard as proposed (inclusive of RNs and NAs) relative to a three-part standard (inclusive of a 3.48 HPRD for total nurse staffing, RNs and NAs) or a four-part standard (inclusive of a total nurse staffing ratio, RNs, LPNs, and NAs)?
- ⇒ Whether CMS should consider a case-mix adjusted staffing HPRD for each provider to assess compliance with the minimum staffing standards? A case-mix adjusted staffing HPRD would adjust the minimum staffing levels based on the health status of the residents in each building. Specifically, the case-mix adjustment methodology aggregates data from each resident's MDS to identify the general level of acuity of each of the residents. The level of acuity is then combined with the self-reported (unadjusted) staffing information to calculate the level of staff the provider has that is equivalent to other providers.
- ⇒ What steps can CMS take to support LTC providers in predicting what their case-mix adjusted staff might be and hire in expectation of that adjusted staffing level? What resources will providers need to proactively calculate their existing HPRD for nursing staff and what may be needed?
- ⇒ What alternative policies or strategies should be considered to ensure that CMS enhances compliance, safeguards residents access to care, and minimize provider burden? Are there other alternative policy strategies that should be considered?

What does LeadingAge Iowa suggest including in the comment letters?

Utilize your specific circumstances to tell your story.

- ⇒ How many nurse aides and RNs would you need to hire to comply with both the 24/7 RN and the HPRD minimums? What would the cost impact be to your community? How would this money be recouped, since CMS stated that this will be an unfunded mandate?
- ⇒ Are there enough applicants in your area to fill the positions that would be needed to comply? What are your current hiring challenges and how would this proposal impact? Here are some data resources to support your statement:
 - Discover supply v. demand for health occupations for your county at <https://iowastudentoutcomes.com/select-health-occupations> (based on 2020 data).
 - According to the Iowa Board of Nursing at the LeadingAge Iowa Fall Leadership Conference, the number of licensed RNs decreased by **3,410** in **FY2023**, compared to FY 2022 and LPNs decreased by **197**. Also, the number of nurses who are employed as a nurse compared to the total number of licensees is much lower (11,075 fewer RNs and 3,349 fewer LPNs). There are currently a total of 47,271 RNs employed and a total of 5,731 LPNs employed.
 - Determine if your community is considered rural or urban at https://www2.census.gov/programs-surveys/metro-micro/reference-maps/2020/state-maps/19_iowa_2020.pdf.
- ⇒ If you're unable to comply with the requirements, will you be eligible to apply for a waiver based on the criteria outlined? Provide specifics that you believe will disqualify you and what this may mean to your organization.
- ⇒ If you're unable to meet the requirements outlined in the proposed rule, what actions do you anticipate will need to occur to be in compliance (decertifying beds, not accepting admissions, etc)? What impact will this have on your local healthcare system (such as individuals in the hospital not being discharged due to lack of services, or being discharged to an environment without adequate care)?
- ⇒ Are there other methods that could be used to enhance quality and safety, such as providing LPNs with additional training in assessment and intervention or enhancing the use of paid feeding assistants?

Additional Resources:

<https://leadingage.org/wp-content/uploads/2023/09/LeadingAge-Comments-tips.pdf> (Has additional links such as tips on commenting, Abt Staffing Study)

The proposed rule can be found at <https://www.federalregister.gov/documents/2023/09/062023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid>