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CMS' Proposed Minimum Staffing Standard

Sam Brooks
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About the Consumer Voice

The leading national voice representing consumers in issues related to long-term care


- ▶ **Advocate for public policies** that support quality of care and quality of life responsive to consumers' needs in all long-term care settings.
- ▶ **Empower and educate** consumers and families with the knowledge and tools they need to advocate for themselves.
- ▶ **Train and support** individuals and groups that empower and advocate for consumers of long-term care.
- ▶ **Promote the critical role** of direct-care workers and best practices in quality care delivery.



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President Biden's Historic Announcement

- ▶ On February 28, 2022, President Biden issued a list of historic nursing home reforms focusing on staffing, transparency and accountability.
- ▶ Central to the reforms was the creation of a minimum staffing standard in nursing homes.
- ▶ For the first time, nursing home residents would be entitled to, at a minimum, a certain amount of care each day.
- ▶ Residents, families, and advocates rejoiced.



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Slide 1

- LS0** - Love it!
- Presenter's name should also be on this page. Maybe just above the Month, day, year?

Lori Smetanka, 2022-08-03T15:45:35.758

4.1 HPRD Long Seen as Minimum


- ▶ In 2001, CMS issued a staffing study report that was the product of years of research.
- ▶ Study found that to avoid compromised care residents needed, at least, 4.1 hours or direct care per day (hprd)
 - ▶ .75 hprd Registered Nurse (RN)
 - ▶ 0.55 hprd Licensed Practical Nurse (LPN)
 - ▶ 2.8 hprd Certified Nursing Assistant (CAN)
- ▶ This number was a minimum. Residents with more needs would require more care
- ▶ Since 2001, the 4.1 hprd has been "gold standard" for minimum staffing.



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4.1 is Over Twenty Years Old

- ▶ Residents are sicker now.
 - ▶ More individuals staying at home and receiving Home and Community Based Services (HCBS)
 - ▶ More residents with mental health issues
 - ▶ More residents with cognitive impairments requiring more care.
- ▶ A 2023 staffing standard would be higher.



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CMS Regulatory Process


- ▶ Issued a Request for Information in April 2022.
 - ▶ Consumer Voice along with hundreds of others commentors expressed overwhelming support for standard
- ▶ Staffing Study
 - ▶ Literature Review
 - ▶ Qualitative
 - ▶ Site visits and Listening Sessions
 - ▶ Quantitative
 - ▶ Data analysis
 - ▶ Simulation Study
 - ▶ State Staffing Requirements
 - ▶ Cost Analysis



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What is the standard?


- ▶ .55 hours of RN care per day (hprd)
- ▶ 2.45 hprd of CNA care
- ▶ No minimum for LPN
- ▶ Total minimum standard of 3.0 hprd.
- ▶ Must still staff to residents' needs (acuity levels)



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Waivers


- ▶ CMS proposing provisions allowing facilities to not comply with minimum staffing standard. (42 C.F.R. § 483.55(g) et seq.)
- ▶ Waivers are one year long. No limit on waivers.
- ▶ Four criteria for waivers and all must be met:
 - ▶ Location
 - ▶ Good faith efforts to hire
 - ▶ Demonstrated financial commitment
 - ▶ Certain exclusions from eligibility for waiver



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Location


- ▶ Supply of health staff not sufficient.
 - ▶ Must show that provider-population ratio is 20% or 40% below national average.
 - ▶ Multi-step calculation using data from Bureau of Labor and Statistics
- ▶ OR, the next closest long term care facility is 20 or more miles away.
- ▶ More on rurality later.



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Good faith effort to hire


- ▶ Must have recruitment and retention plan in accordance with 42 C.F.R. § 483.71(b)(5)
- ▶ Diligent efforts to hire
 - ▶ Offering jobs at PREVAILING wages
 - ▶ Job listings in common recruitment forums, etc.



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Demonstrated Financial Commitment


- ▶ Vague requirement that a facility must document the financial resources it expends annually on nurse staffing relative to revenue



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Exclusions from Waivers


- ▶ Cannot be Special Focus Facility
 - ▶ Only 88 SFF in the country out of roughly 15,000 nursing homes
- ▶ Cannot have been cited in previous 12 months for :
 - ▶ Widespread insufficient staffing with actual resident harm; or
 - ▶ Pattern of insufficient staffing with actual harm; or
 - ▶ Immediate jeopardy related to staffing
- ▶ Failed to submit staffing data (Payroll Based Journal)



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▶ Waivers Cont'd


- ▶ Consumer Voice opposes all waivers. All residents, regardless of geographical location, are entitled to safe and high-quality care
- ▶ Facilities still allowed to accept new residents, despite failure to be able to safely care for current residents.
- ▶ No requirement that facility create better jobs or invest in staff.
- ▶ Turnover not a factor.



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▶ Timeframes

- ▶ 24 /7 RN
 - ▶ Urban: 2 years from date of final publication of rule
 - ▶ Rural: 3 years from final publication of rule
- ▶ Minimum Staffing Standard
 - ▶ Urban: 3 years from final publication of rule
 - ▶ Rural: 7 years from final publication of rule




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▶ Unacceptable Timeframes

- ▶ Could be seven years before this proposed rule goes into effect in rural areas.
- ▶ Abt study found that staffing is almost identical in rural and urban facilities, yet CMS is still proceeding with prolonged rural phase in.
- ▶ Only sizeable difference in staffing is LPN, the staffing category CMS is not including in its minimum staffing standard.


	# of Facilities	RN	LPN	CNA	Total
Urban	10,973	.67	.91	2.21	3.80
Rural	4,174	.64	.80	2.23	3.66



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▶ **24/7 Registered Nurse on Site**


- ▶ Nursing facilities must have a registered nurse (RN) "on site" 24 hours per day, 7 days a week. (42 C.F.R. § 483.35(b)(1))
 - ▶ "Available to provide direct resident care"
- ▶ Current regulations only require an RN to be present eight hours per day.
- ▶ What does available mean?



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▶ **Medicaid Transparency Reporting**


- ▶ States will be required to report annual Medicaid spending on direct care workers and support staff. (42 C.F.R. § 442.43, et. seq.)
- ▶ Very broad definitions of direct care workers and support staff.
 - ▶ Must be broken down by staff type
- ▶ Accessible to the public on state run website.
- ▶ Simple reporting requirement
- ▶ NPRM states it did not have enough information to implement a direct spending requirement, despite implementing one in the Medicaid HCBS setting.



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▶ **Facility Assessment**

- ▶ Adds requirements to existing facility assessment regulations at 42 C.F.R. § 483.71.
- ▶ Annual assessments that require facilities to assess resident needs.
 - ▶ Staffing plans
 - ▶ Resource allocations
 - ▶ Emergency planning
- ▶ Would go into effect 1 year after publication of final rule



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Comment, Comment, Comment

- ▶ Comments are due on November 6, 2023
- ▶ Go here to comment: <https://theconsumervoice.org/issues/other-issues-and-resources/staffing/2023-proposed-rule>
- ▶ <https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid>



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Questions

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