

# Minimum Staffing Rule

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April 22, 2024





# Impossible Staffing Mandate

- No funding
- Required staff are simply not available
- No pipeline is being built to produce the number of RNs needed
  - Even if it were, RNs are in demand across all health care sectors



# Staffing Requirements

- Minimum 3.48 total nurse staff HPRD
  - Can include CNAs, RNs & LPNs
- Specific minimum 0.55 RN HPRD
- Specific minimum 2.45 CNA HPRD
- RN onsite 24/7
- DON now counts for 24/7 & 0.55 HPRD if providing direct care



# Implementation Timelines

- 3.48 HPRD total nurse staff hours & 24/7 RN requirements
  - Effective in 2 years in urban areas
  - Effective in 3 years in rural areas
- Specific 0.55 RN and 2.45 CNA HPRD requirements
  - Effective in 3 years in urban areas
  - Effective in 5 years in rural areas

# Two Waivers

- 2 options for 24/7 RN Requirement
  - Existing statutory RN waiver for rural
  - New hardship exemption requires extensive criteria
    - Local workforce must be 20% below national average, good faith efforts to hire, demonstrated financial commitment
    - Appears to require application process
    - Exemption relieves 8 hours per 24
    - CMS believes 25% will meet
- HPRD Requirements
  - Requires facility to be found noncompliant
  - Extensive criteria
    - Local workforce must be 20% below national average, good faith efforts to hire, demonstrated financial commitment
    - Appears to require application process
    - CMS believes 25% will meet



# Facility Assessments

- Implementation date extended to 90 days vs. 60 days
- Added facility must solicit and consider input received from residents, resident reps, and family members
- Other changes per proposed rule



## Penalties

- Details not available now
- CMS will publish before implementation dates of each component



Next Steps





# Helpful Legislative Activity

## Current Activity

- [S. 3410/H.R. 7513](#) Protecting America's Seniors' Access to Care Act
  - Introduced in Senate by Sen. Tester & Sen. Fischer [Article Letter](#)
  - Introduced in House by Rep. Fischbach [Article](#)
  - [Coalition Letter Urging Support For The Protecting Rural Seniors' Access To Care Act](#)
  - Prohibits the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the nursing home workforce.
  - Passed out of W&M Committee with bipartisan vote.
- [S. 3841](#) VA Report on Proposed CMS Staffing Ratios Act
  - Introduced in Senate by Sen. Angus King & Sen. Cramer [Article Letter](#)
  - Requires the VA to study the risks to elderly veterans of a proposed rule by the CMS that would unsustainably change staffing ratios at nursing homes. The bill requires an assessment of the VA's ability to continue meeting the long-term care (LTC) needs of veterans at VA and VA affiliated nursing homes, with a focus on rural areas, if the rule were to be implemented as currently proposed. It would require the Secretary of Veterans Affairs to submit a report on the VA's findings to Congress within 60 days of the bill becoming law.
- Bipartisan Letters Against the Proposed Staffing Mandate
  - January 2023: Led by Sen. Tester, Sen. Barrasso, Sen. Daines, & Sen. Hickenlooper [Letter](#)
  - June 2023: Led by Sen. Tester [Letter](#)
  - September 2023: Led by Sen. Tester & Sen. Lankford [Letter](#)
  - October 2023: Led by Rep. Pence, Rep. Guthrie, Rep. Buchanan, Rep. Fischbach, Rep. Golden, & Rep. Pappas [Letter](#)



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